S. HRG. 100-826

NAVAJO-HOPI RELOCATION PROGRAM AND PROPOSED AMENDMENTS

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 1236

TO REAUTHORIZE HOUSING RELOCATION UNDER THE NAVAJO-HOPI RELOCATION PROGRAM

APRIL 12, 1988
WASHINGTON, DC

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NAVAJO-HOPI RELOCATION PROGRAM ANDPROPOSED AMENDMENTS

TUESDAY, APRIL 12, 1988

U.S. SENATE
SELECT COMMITTEE ON INDIAN AFFAIRS
Washington, DC

The committee met, pursuant to notice, at 2:35 p.m., inroom 485, Russell Senate Office Building, Hon. Daniel K.Inouye (chairman of the committee) presiding.

Present: Senators Inouye, DeConcini, and McCain.

Staff present: Patricia Zell, Virginia Boylan, June Tracy, Dan Lewis, Yvette Joseph, Richard Bud Moccasin, and Lynn Toledo.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The hearing will please come to order.

The committee is meeting this afternoon to receive testimony on amendments to S. 1236, a bill to increase the annual housing authorization for the Navajo-Hopi Relocation Commission, and to increase the Commission's authorization level for payment of bonuses to individuals who voluntarily apply for benefits under Public Law 93-531, the Navajo-Hopi Land Settlement Act, enacted in 1974.

Among other changes, the proposed amendments would alter the structure of the existing Relocation Commission creating one commissioner to oversee the relocation effort. The Office of the Commissioner would be established within the Office of the Secretary of the Department of the Interior.

Another proposed change would impose a limitation upon contracts for legal services and attorney fees that are related to the relocation effort.

Although a hearing has been held earlier this year on S. 1236, amendments proposed by Senator McCain had not been sufficiently reviewed by the Administration at that time. In an effort to afford all parties the opportunity to thoroughly review the amendments, and to provide the committee with their respective views, we have called this hearing today. Because of the urgency associated with the need to address this continuing problem, the committee has scheduled S. 1236 and the proposed amendments for committee consideration and markup tomorrow, April 13, 1988.

[Text of S. 1236 follows:]

100TH CONGRESS
1ST SESSION

S. 1236

To reauthorize housing relocation under the Navajo-Hopi Relocation Program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 19 (legislative day, MAY 13), 1987

Mr. INOUYE introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To reauthorize housing relocation under the Navajo-Hopi Relocation Program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Subsection (a) of section 25 of Public Law 93–531 (25 U.S.C. 640d–24(a)) is amended—

(1) by striking out "$7,700,000" in paragraph (4) and inserting in lieu thereof "$13,000,000", and

(2) by striking out "$15,000,000 annually for fiscal years 1983 through 1987" in paragraph (8) and inserting in lieu thereof "$30,000,000 for fiscal year 1988, and for each succeeding fiscal year".

SEC. 2. Subsection (b) of section 27 of Public Law 93-531 (25 U.S.C. 640d-25)) is amended to read as follows:

"(b) Funds appropriated under the authority of subsection (a) may be used by the Commission for grants, contracts, or expenditures which significantly assist the Commission in carrying out the duties of the Commission or assist the Navajo Tribe or Hopi Tribe in meeting the requirements of this Act.".

The CHAIRMAN. The members of the committee look forward to the testimony that we are about to receive today. I am certain that it will be of great assistance to us as we proceed with consideration of S. 1236 and the proposed amendments. Before calling upon the witnesses, we have with us the two senators who are most closely concerned with this matter.

First, may I call upon Senator McCain?

STATEMENT OF JOHN McCAIN, U.S. SENATOR FROM ARIZONA

Senator MCCAIN. Thank you, Mr. Chairman.

I would like to again express my appreciation to you on behalf of the people throughout the State of Arizona for your continued and abiding interest in this entire issue. And I would suggest that you are the first chairman of this committee who has ever actually visited the partitioned lands, and we are deeply grateful for the interest you have shown in this very agonizing issue.

I look forward to the testimony of the Navajo and Hopi administration today, and I think that the changes I have proposed are certainly open to negotiation. And I look forward to hearing their views on these amendments, which briefly, would create a single commissioner, limit the authorization for legal services contracts, require two additional reports to the Congress prohibiting lobbying of the Congress with appropriated funds, allow for a modified lifting of the Bennett Freeze except for new housing construction, and limit the payment of attorneys fees for both tribes.

I think some witnesses here will stress the need to complete relocation in an expedited manner, and I agree with that. But I think it's equally important to stress that the Congress must ensure that the relocation program is carried out in the thorough and generous manner in which it originally intended, and that the remaining relocatees, many of whom have been waiting for several years, receive their benefits more efficiently.

As I stated in the December hearing, these amendments are not intended to preclude any negotiated settlement between the two tribes. Mr. Chairman, the solution to this issue, I think, is generally held to be in negotiations between the two tribes. We continue to encourage that. I am convinced that the most equitable settlement would be arrived at through the tribal leadership sitting down and discussing this issue with one another. Unfortunately, that's not going to happen, and in the meantime I think we have to make this process as expedited and as fair as possible.

I'd like to also express my appreciation to my friend and colleague, Senator DeConcini, who has been involved in this issue for so many years, and who I've had the opportunity of discussing these amendments with which we are generally in agreement with some areas that I think still need to be ironed out. And I appreciate his continued commitment to finding an equitable and fair resolution to this very difficult issue.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator.

And now I would like to call upon the senior Senator from the State of Arizona, Senator DeConcini.

STATEMENT OF DENNIS DECONCINI, U.S. SENATOR FROM ARIZONA

Senator DECONCINI. Mr. Chairman, thank you.

And I'd like to echo my friend and colleague's, Senator McCain, compliments to you for taking the time in pursuing this matter as much as you have. And I'm afraid that we may continue to ask you to assist us in this effort.

And I want to compliment Senator McCain for stepping up to this problem of some amendments to the Navajo-Hopi Relocation Commission. I welcome the Commissioners that are here, Mr. Watkins, and Mr. Atkinson, and Ms. Massetto. They've worked hard. It's a difficult job and responsibility they have, with little thanks and a lot of headaches.

As the Chairman knows, I have strong disagreement with the use of relocation to resolve the dispute of land rights. I've never been able to see any wisdom or value in forcing long time users of the land in dispute to relocate. The Federal Courts did not mandate that the land be partitioned and that families living on those lands be required to move. Congress, in 1974, chose to adopt the use of partitionment and forced relocation. This, in my opinion, was a mistake. It is a most inhumane way to address conflicting claims of the land upon which people depend for their livelihood.

That's why, while I'm willing to support changes in the current law, I must again say that the real solution is to satisfy the legal rights of a government to the land without forcing human beings to relocate. This is fully within Congress's ability to do. Until we do that, this problem will remain with us. And I intend to continue to press my colleagues for consideration of some alternative settlement to this problem.

I will say, for the record, that I find the Administration's proposed amendments unacceptable. The proposal will have the effect of expediting the relocation process, forcing families into choosing between options, which only worsen their current circumstances. One provision in the amendment troubles me especially. Why is the trustee asking for the power to take trust funds, funds which are dedicated by law to specific purposes, serving trust fund beneficiaries who are tribal members, for rental payments, which to date have always been paid? I'm advised that the tribes in question here have always paid the rental payment. They have contested the amount of the rental fees due, but they have paid the fees, while appealing the amount in question.

The proposed amendments of the Administration—and let me point out these are not the amendments offered by the Senator from Arizona, Mr. McCain—does not have a problem to address yet, will create dangerous precedents if these proposed Administration amendments should be adopted. I do not find the proposed changes to reflect the actions of a responsible trustee. This is only one example of how troubling these proposals are for me, and why I cannot support the Administration approach here.

In the meantime, here we are trying to improve the administration of the relocation program. The program has been plagued with all kinds of problems, and the families have only continued to suffer. It is my hope that under a restructured commission that the

job will be done with fewer problems, and we will not see the excessive expenditures of Federal funds for questionable activities, like legal contracts, et cetera.

I will emphasize my strong view that until the new office of the Commissioner has had time to determine the additional resources, which may be required to improve the program, I cannot support an increase in the current authorization level. The Commission's inability to complete the job has not been due to lack of funds. A task of this nature simply takes a lot of time, especially if it is done with the proper attention to the families at risk. More money for housing, or bonus payments, will not improve the ability to do the job.

Mr. Chairman, thank you again for your time and letting me express my views.

The CHAIRMAN. I thank you very much, Senator DeConcini.

Now I would like to call upon the Chairman of the Navajo-Hopi Indian Relocation Commission, Mr. Hawley Atkinson. And with him are members of the Commission, the Vice Chairman, Ralph A. Watkins, Jr., and Ms. Sandra Massetto.

Ms. Massetto and gentlemen, welcome.

STATEMENT OF HAWLEY ATKINSON, CHAIRMAN, NAVAJO-HOPI INDIAN RELOCATION COMMISSION, ACCOMPANIED BY RALPH A. WATKINS, JR., VICE CHAIRMAN; SANDRA MASSETTO, COMMISSIONER; AND CHRIS BAVASI, EXECUTIVE DIRECTOR

Mr. ATKINSON. Mr. Chairman, Senator DeConcini, Senator McCain, we're happy to have the opportunity to appear before the committee again, regarding our pending reauthorization.

Mr. Chairman, you have introduced my colleagues. I would like to introduce our Executive Director, who is behind me, Mr. Chris Bavasi, who has two members of his staff who will also attend the markup tomorrow.

The CHAIRMAN. Would you like to have him join you at the panel here?

Mr. ATKINSON. I would like Mr. Bavasi to join me if that's agreeable with you, Mr. Chairman.

The CHAIRMAN. Fine.

Mr. ATKINSON. I'd like to acknowledge, in our formulation, the Administration's position. Of course, Assistant Secretary Swimmer's input was as much as ours, and we, I think, arrived at a reasonable position. But I'd also like to thank Ralph Reeser and Joel Star for their assistance in the matter.

In response to Senator McCain's request for the Commission position on his amendments, we provided the committee members with a written statement on March 21. Today we have submitted a formal Administration position. The Commission and the Administration basically feel that the amendments we have proposed will expedite the relocation process, while Senator McCain's amendments could have the opposite effect.

And, sir, we're pleased to be here, and we certainly will try to answer any questions that you or the committee members may have for us.

The CHAIRMAN. Mr. Atkinson, I presume that you have a written statement, the official statement?

Mr. ATKINSON. I think, sir, we have given that statement to your staff.

The CHAIRMAN. Then, without objection that statement will be made part of the record.

[Prepared statement of Mr. Atkinson appears in appendix.]

Mr. ATKINSON. Thank you, Senator.

The CHAIRMAN. I will be asking a few questions, but before I do may I would like to recognize Senator McCain to begin the questioning.

Senator MCCAIN. Thank you, Mr. Chairman.

I guess maybe it might be good—I am in receipt of the message that was sent to Senator Inouye concerning the amendments. Perhaps it might be well if we could just discuss some of them and go down the line, with the indulgence of the Commission.

Very briefly, one of the amendments restricts the Commissioner to use only specifically appropriated funds for outside legal services. The amendment authorizes $100,000 appropriation for legal services. Any problem with that?

Mr. ATKINSON. Senator, I'm having a little problem hearing you, or understanding.

Did you ask, Senator, for our comments on the limiting Office Commissioner's authority to contract for legal services?

Senator MCCAIN. Yes.

Mr. ATKINSON. Well, we feel that the proposed limit in your amendments are adequate for contract legal services, and therefore we certainly have no objection to this provision. The Commission or the commissioner, if the structure is changed, should not be precluded from hiring legal counsel, as a staff position because of the volume administrative appeals and pending litigation.

And that's our personal opinion, sir. I think the Administration position is that there's no specific mention made.

Senator MCCAIN. Thank you. And I'd like to ask the other members of the Commission if they'd like to add or compliment any of these—as we run through them—please feel free to do so.

Next, I'd like to refer to the reports to the Congress amendment. It requires a report to be submitted within 6 months by the Commissioner concerning location of households and personal property containing the names of all members of either tribe who reside within the partitioned lands and the fair market value of the habitation improvement owned by these heads of household. In addition, this report is to include any recommendations the Commission may have for additional legislation. The report is identical to the one required under Public Law 93-531, submitted by the Commission in 1981.

Mr. ATKINSON. Senator, I'm sorry that I'm not hearing that well, but a comprehensive report has already been completed and accepted by the Congress, which you mention.

And the Navajo Tribe and others opposed to relocation have stated that the existing planning work is not adequate. What they really mean is, that they don't agree with it. This is not surprising since they would oppose any plan which would carry out the law.

We have rendered a number of reports, and each year we have appeared before a House Subcommittee on Appropriations, and a Subcommittee in the Senate on Appropriations. In each of those appearances, we've included up-to-date reports. We put out every month, a statistical report. And it would be no trouble for us to compile what we have already done, but I think it would be not expeditious to do that, and take our time from other matters that are being used to expedite relocation.

Mr. WATKINS. I would have a response, but I'd be stealing from Ms. Massetto's response, she gave me just before we came over here.

Ms. MASSETTO. No; go ahead.

Mr. WATKINS. She said the vaults of Congress are filled with reports.

Senator MCCAIN. Thank you.

Ms. MASSETTO. Senator McCain, could I respond to that.

Senator MCCAIN. Yes.

Ms. MASSETTO. First of all, I have some concern about redoing the enumeration. Quite frankly, the people that are out on the HPL are sick and tired of having somebody come out and count them. I think that there are adequate records available with the BIA and with the Navajo Tribe and with the Navajo-Hopi Relocation Commission, that meet the requirements of reporting who is out there.

Quite frankly, I have been one, over the years, that have objected to the manner in which the plan has been put together. If I would have had my druthers, it would have been done differently. The problem that we face today is that we are now 2½ years into a planning, sort of on-site planning process with the BIA. Certain things have been done, and have been carried out. I would not personally object to a review of what needs to be done, but I don't think the time needs to be spent in writing reports. I think that the time of the Commission needs to be spent in getting things done.

Senator MCCAIN. Thank you.

The Bennett Freeze allows the Commissioner to approve development in the Bennett Freeze area upon the determination that such improvement, construction or development is necessary for the health, safety or general welfare of the Navajo or Hopi Tribes, or including members thereof. This amendment would exclude new housing construction.

Obviously, before that, the tribes would request of the Commission that certain changes be made, and if they couldn't agree then we would have to resort to appealing to the Commission.

Mr. ATKINSON. Well, Senator—Mr. Chairman, Senator McCain, the Commission concurs in that amendment and believes it will help ease the burdens of those living in the Bennett Freeze area during the pending litigation. Now that's the Commission's position. When the Administration's position was put together, there was no position taken in that particular item.

Ms. MASSETTO. I agree with the amendment.

Senator MCCAIN. In the case of a single cash payment, doesn't the Commission have the ability already to purchase the relocatee homes?

Mr. ATKINSON. Sir, we have the ability to purchase—Senator, your question is do we have the ability to purchase a — as I understand your question, do we have the ability to purchase a home in which a relocatee is living, if it's safe, decent and sanitary, and meets the other parts of the law.

Senator MCCAIN. Indeed. Correct.

Mr. ATKINSON. I believe we do have. I believe that we could purchase that house from them, Senator. I believe we could.

Senator MCCAIN. Does your staff have a handle on how many might qualify under this criteria that you just articulated; safe, healthy homes?

Mr. ATKINSON. Mr. Bavasi.

Mr. BAVASI. Senator, we feel that there would be some, but not a tremendous number that would currently be living in a decent, safe and sanitary home, that are currently making payments and owning a decent, safe and sanitary home. There are a number that are living in and renting decent, safe and sanitary situations.

Senator MCCAIN. Ownership, which is how many would you guess, 40, 50?

Mr. BAVASI. That's very likely.

Senator MCCAIN. Thank you.

What plan does the Commission have for economic development on the new lands and communities directly and substantially impacted by relocation?

Perhaps you would want to provide that for the record.

Mr. ATKINSON. I think it would be--thank you for giving us that option, Senator. Yes, we'll provide that in detail to the record.

I would only say verbally that economic development on the Indian reservations has been a very, very difficult problem. On our own development, particularly in the new lands, we have solicited the Navajo Tribe's community development, their economic development sections a number of times. But really have not been successful in that yet.

So economic development, I think our basic of it is that economic development to be lasting and worthy, has to be done through private enterprise, or with private enterprise, to make employment sustainable and last.

Senator MCCAIN. Thank you.

Are there any other comments or explanations, or recommendations that any of the Commission would like to make at this time?

Mr. ATKINSON. Well, on economic development—

Senator MCCAIN. On anything to do with what we're—

Mr. ATKINSON. Oh, with the whole—

We feel that the redevelopment fund would be a tremendous asset to us. This is an up front payment of the revenues from the new lands, which were provided for in the 1980 law. We feel that those revenues, if we could set up a redevelopment fund, put $10 million a year in for five years, then use that money, that it would not only assist the economic development, it would assist greatly in social life, and complete the infrastructure and be—we think we could make those new lands far more deserving for the relocatee, than we could without them.

Of course, the basis is the Government, the Senate, in giving us the money to put in there, and then repaying it through the reve-

nues that would flow from the new lands over the next few years. Particularly the Paragon Resources, I don't think we could anticipate any large flow of revenues for at least three or four years, and I think that's one item where we really could be of assistance to the relocatee and help to ease the trauma and all of the burdens.

And perhaps Mr. Watkins has another—is it all right to ask him to comment?

Senator MCCAIN. Please. Any comments by any of the members of the Commission on anything that is being discussed today. I'd like to get the full views for the record.

Mr. WATKINS. Mr. Chairman, Senator McCain, I thought the economic conference that you all attended on the reservation up there was a very, very good start, and I was in hopes that the Relocation Commission could join in that in some form or activity, to participate and help out in that conference.

I don't know what's transpired since then. I don't know — hopefully there's been a good start up there. But I always felt the Relocation Commission could be of some assistance in the relocatees after that got off the ground.

Senator MCCAIN. I certainly am in agreement with you, and I hope that we can work towards that goal of involving the Commission more in that.

Anything else?

Ms. MASSETTO. Yes.

Mr. Chairman, Senator McCain, I have served on the Commission February of this year, for nine years, and each one of those years I hoped that we would come closer to not having to be here to talk about the Navajo-Hopi relocation issue. But that has not been the case. And even today the amendments that we, the Administration, and Senator McCain have forwarded, do not appear to bring this issue to any closer resolution.

My own personal feelings on the relocation is one—and I have—before there was Udall-McCain, there was Massetto-Lewis, and that was a comprehensive settlement with land exchanges. Senator Goldwater reviewed that and took a position early in 1982 that he thought that there should be some kind of Big Mountain exchange. That did not go forward. If that cannot be the case, then my suggestion to you is that you reinstate the life estate provisions of the 1980 amendments, with a period of a year for people to make that selection.

The Commission has gone through extensive hearings on that issue. Rules and regulations were adopted that I think are fair to both tribes, and that is a possible option for people to make a selection that want to stay out on the Hopi Reservation, under Hopi jurisdiction.

The third option, Senator McCain, is to say within six months that families must pick a site, either off reservation, on reservation, or on the new lands. And that if they have not picked a site by that point in time, that they must then, within 6 months, negotiate with the Hopi Tribe to see if they can stay on the Hopi Reservation. And at that point in time if they have not reached some kind of solution with the Hopi Tribe, I think that we're going to have to deal with the reality of relocation. And that is, are these

people going to be trespassers, or is the Congress really going to step in and do something.

I think it's inexcusable for you to continue this. It puts the Hopi people in an intolerable situation. It puts the Navajo people in an intolerable situation, and I think it has to come to some kind of end. None of us like relocation. You know, I wish that it were otherwise, but Congress chose that option, now you must choose how you want it to end.

One of the things that I remember when I first came on the Commission, was I read in the directives, the guiding lines, it says do not repeat the mistakes of the past. And when I went back and I took a look in the 1830's of the forced Jackson relocation, one of the things that they did was divide and conquer; allow the people that will go to go, and then we'll see what we do with those that are left over. What happened to those that were left over, is one, they lost the best lands where they could relocate; they were stragglers and no one took any attention to them; or lastly they were left behind under State jurisdiction and were abused there. I see the same thing here, and I think it's wrong. And I think you need to bite the bullet now, not next year, and get something really concrete and over. And make this thing over.

Thank you.

Senator MCCAIN. By taking what specific action?

Ms. MASSETTO. Well, I've given you three options. And I think that those are reasonable options: land exchange, life estates, or saying that you have to get a site, negotiate with the Hopi Tribe, or at some point in time be subject to trespass, and legal removal. That's the reality of relocation.

Senator DECONCINI. Would the Senator yield?

Senator MCCAIN. I'd be glad to yield.

Senator DECONCINI. Your first option, land exchange, you mean in line with the Lewis-Massetto-Udall-McCain comprehensive settlement?

Ms. MASSETTO. And even Goldwater land exchange. Yes, sir.

Senator DECONCINI. But that's the frame you're talking about, one of the comprehensive settlements?

Ms. MASSETTO. I have always felt that was the best way to approach it. That's my personnel opinion.

Senator DECONCINI. Thank you.

Senator MCCAIN. Thank you very much, Mr. Chairman. And I'd like to again thank the Commission for the very dedicated work they've done over a long period of time.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator DeConcini.

Senator DECONCINI. One question, Mr. Chairman. I'll be short here because of time restraints.

I wonder if Mr. Atkinson or someone there, if the housing authorization were doubled, how many families would the Commission be able to actually move?

Mr. ATKINSON. Mr. Bavasi, if the housing appropriation was doubled, how many families would we be able to move?

Mr. BAVASI. Senator, it would be approaching 400 a year.

Senator DECONCINI. Is it realistic to expect that additional families could in fact be moved in the same period of time that it now takes the Commission to move about half as many families?

Mr. BAVASI. Senator, I think that it's realistic. It would take us probably several months to gear up. We would no doubt have to, we feel, perhaps hire four or five additional people to double that kind of an effort. However, our major technical problem now is we cannot move people fast enough, so that the people are available.

Senator DECONCINI. Last question.

Those families that have signed up and left, but have not been given their benefits, versus those families that are still out on the land, is there—do any of you, each of you, have a priority, which one in your judgment should be attended to first if you have to make that choice?

Ms. Massetto.

Ms. MASSETTO. Well, first of all the choice has been pretty much mandated by Congress, that the District 6 evictees are priority, current residents on the HPL are priorities. Part of the problem that we have faced in the past is where can these people go. Site selection is very difficult. And it's—we have to move through the mechanism of the tribe in order to get a homesite lease.

In a perfect world, my movement would be, they would be all at the same time. They would be based on extended families, and—

Senator DECONCINI. If you'll let me interrupt you—

Ms. MASSETTO. Sure.

Senator DECONCINI. There are a lot of people that have signed up to move and have left the lands? Is that correct?

Ms. MASSETTO. That's correct.

Senator DECONCINI. And many of them have not been awarded their benefits?

Ms. MASSETTO. That's correct.

Senator DECONCINI. That don't have housing, they don't have bonuses. They don't have what is provided for them?

Ms. MASSETTO. That's correct.

Senator DECONCINI. Then there are those that are still on the land.

Ms. MASSETTO. That's correct.

Senator DECONCINI. Though under freezes and some limitations, do have a place to live and are physically where they want to be.

Ms. MASSETTO. Well—

Senator DECONCINI. So, given those priorities, it seems to me like those that are off the land ought to be attended to. That we've really been negligent in not attending to those first. But maybe you disagree and I'm just really seeking your advice.

Ms. MASSETTO. No; I don't disagree with you, but I do think that there's somewhat of an overstatement by saying that these are people are somehow just wandering around out there. Many of the 1,300—

Senator DECONCINI. Well, they're living with families or they're renting houses, or something.

Ms. MASSETTO. Many of the 1,300 members, individuals, are out there, they do not have in many instances their own home, that's correct. The problem has been they really don't want to move off reservation. They want to move on reservation. Where do they go if

they can't get a homesite lease? That's part of the problem. Many of them want to go to Tuba City. Many of them want to move in the Bennett Freeze area. They can't move there because of the building prohibitions.

Senator DECONCINI. Anybody else have a comment?

Mr. WATKINS. Mr. Chairman.

Senator DECONCINI. Mr. Watkins.

Mr. WATKINS. Senator DeConcini, and I served as chairman and I thought that was one of the travesties of justice that we did not take care of those people. By law and by Congress we couldn't move some of them, but there's I think in excess of over 1,100 families that have obeyed the law, moved off the reservation—

Senator DECONCINI. And have not been taken care of?

Mr. WATKINS. And are in that predicament, and we haven't taken care of them. And I think it's something that somebody has to stand up and be counted for. And I don't know who it is, but they need help. Yes, they need help badly.

Senator DECONCINI. Do you think that should be the first priority?

Mr. WATKINS. Yes, sir; they've been out there 7 and 8 years.

Senator DECONCINI. Mr. Atkinson, do you have an opinion?

Mr. ATKINSON. Mr. Chairman, Senator DeConcini, those families who are physically occupying the land or the HPL, that have moved, certainly should be as high a priority, or higher than others.

Senator DECONCINI. Those that have moved?

Mr. ATKINSON. Yes; that were physically relocated there. But a great number of those families, when the law was passed in 1974, and when the Commission was formally put together in July 1975, were not physically occupying those lands, and were in the periphery, or even out-of-state. Those who were physically occupying it should be certainly a high priority.

I also think that one of the highest priorities should be those families who are still left on the Hopi Partitioned land.

Senator DECONCINI. If I understand you, you're saying that they're both high priorities, but if there was one, those that have left or have signed up and agreed to leave, or have left and have not been given their benefits, roughly 1,100 to 1,200 families, those are the ones that ought to be tended to, if you had to prioritize? Yes, or no?

Mr. ATKINSON. I think that—yes.

Senator DECONCINI. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

One of the provisions of the proposal calls for the reduction of the three-person commission to one commissioner. I gather that you are opposed to this proposal. Can you tell us why you are opposed to it?

Mr. ATKINSON. I think basically, the reason that we're opposed to it beyond the comments that are made in the Administration's position, and the Commission's position, is that we don't feel that it would expedite relocation in any way at all. A new commissioner, or a change in the structure of the commission as it exists today,

would present problems that would have to be overcome before the relocation would continue at the same pace it is.

Now, the three commissioners have given a sounding board to each other. They have debated and argued, discussed, sometimes in public, as to the direction the commission should take. In my opinion, in our form of government, and the way we conduct our legislative and executive affairs, that's not too bad at all.

A sole commissioner would expedite, if a sole commissioner was chosen, who had an in-depth background of the relocation problem, if it were a presidential appointment, and if it were confirmed by the Senate, but left as an independent agency to move the three commissioners, or a sole commissioner, or to restructure the commissioners and putting them into the Department of Interior would be defeating. And would again, not expedite and probably would compound the difficulties. A sole commissioner or a restructuring of the commission should be, if it's done, with a look toward the future.

One of the things that the commissioners need, and that a sole commissioner would need, is an access to at one of the offices of the two Senators from Arizona, and a selection should be on that basis. It also should probably—not probably—in my opinion, definitely wait until after the November election, and a restructuring of the commission would take into the effect the Administration that would be in power, commencing in mid-January of 1989. A restructuring of the commission to put commissioners or a commissioner into that position, if he had an entree with the Administration would be of assistance. This would help with the Office of Management and Budget, and also help in the relationship with the Department of Interior.

At this time, why we're in the last few months of an Administration. There will be, as you're certainly more cognizant than I am, a new Administration in January of 1989. Whether that Administration will continue to be Republican or change to Democrat, we'll know on the first Tuesday of November. But regardless of all the humanities, and the traumas, and the emotions, and the subjectivities of relocation, it is still the commission is a political creature created by the Congress to be an independent agency in the Executive Branch. And, in my opinion, it would be far better to wait and see what's coming down the road, and make the decisions based then. The commission is political, and I think the political waters should settle, and any restructuring actually done would be best put aside and wait until that time.

Thank you, Mr. Chairman.

Ms. MASSETTO. I have no comment.

Mr. WATKINS. Mr. Chairman.

The CHAIRMAN. Mr. Watkins.

Mr. WATKINS. Yes; Mr. Atkinson put it very well. And it is an excellent statement.

But I need to say this too, because this commission, as Hawley's been on from the beginning; Sandy's indicated she's been on 9 years, and I have only been on 4 or 5 years, we have had our ups and downs, and yes, we have discussed it in public, and maybe that is good, and maybe that is bad. I do not know. But we are together today, and I think as a commissioner, I think we are entitled to

finish this program, the three of us. But that is going to be up to Congress, whatever they want done.

I don't think any of the three of us have any concerns about leaving, except we have our concerns about finishing the program. And in spite of a lot of press and everything else, I think we've done a very, very good job, and others will comment on that later, sir.

Mr. ATKINSON. Thank you, Mr. Chairman, and I hope that's an answer.

The CHAIRMAN. This proposal also calls for placing the single commissioner in the office of the Secretary of the Interior. Do you have any thoughts about that?

Mr. ATKINSON. Mr. Chairman, Senator DeConcini, Senator McCain, to place it in the office of the Secretary would be to institutionalize it, would be to make it a continuing appointment, would be a conflict with the trust responsibilities that the Secretary has to all American Indians, or native Americans. And I think put the Secretary of Interior under tremendous pressure.

The Navajo Tribe has never accepted relocation. They didn't in the past, they don't today, and I don't think they will in the future. And they've made no bones about that, that they were going to oppose relocation and make every effort they could, not only opposing it, in repealing the law. And in my opinion, they've done a very effective job, that the Navajo Tribe, its leadership, under its present leadership with Chairman MacDonald is very effective, and I think it would put an undue burden on the Office of the Secretary.

And taking the independence of the commission away from it, I don't think would be a good thing.

Ms. Massetto would you comment on that trust responsibility?

Ms. MASSETTO. Just to add to Mr. Atkinson's comments, I do believe that having the agency independent from the Department of Interior, gives it flexibility that it would not have it if it were with the Department.

The fact that the program is to come to some end at some point in time, further supports keeping it in an independent position. I know that Senator McCain has raised issues about accountability, and I think he has hit the nail on the head. But I don't think transferring it to Interior necessarily accomplishes that goal.

The CHAIRMAN. Americans have been often times described as being very mobile and transitory. In fact, I believe studies indicate that at any one time about 15 percent of Americans are moving their residences. However, some of the articles I have read about this relocation process would lead me to believe that there are some in this case who have great difficulty moving—the burial sites of their ancestors are in the near vicinity. They have lived there for many generations. They have become accustomed to the topography and the environment.

Are these factors essential in the consideration of resolving this matter, or should the law be applied strictly as constructed?

Mr. ATKINSON. Senator Inouye, Mr. Chairman, I think the culture and the heritage of the Navajo families who are being relocated is affected by that. I don't know of a better solution. I would state that the Navajo Tribe, in their selection of the new lands, did

keep them within the confines of their four sacred mountains; that in the first public law the Congress said that the sacred sites and historical sites would be kept open for use and visitations by both tribes, but I don't think there's anything that we can do that relocates the Navajo family that's going to lessen their feeling of regret, or even despair, at leaving what they feel are their immediate homes, ancestral homes.

Ms. MASSETTO. I have no comment.

Mr. WATKINS. Senator, just one comment.

When the July deadline came and left us, and there was no tragedies, we all breathed a little bit better. But I know that the Chairman of the Hopi Tribe advised us at the time, that there would be no evictions; there would be no trespassing problems, and there hasn't been. And yes, we have compassion. We have concern for those people. And the movement, and Senator Goldwater attempted on several occasions to try to make a land exchange for some of those people out there in the areas that you spoke of. And to no avail.

Thank you.

The CHAIRMAN. What is the present status of the Tuba City airport?

Mr. ATKINSON. Senator Inouye, I don't know the present status of the airport. Off the top of my head, I'd say it's hung up and not going anywhere at this time.

Mr. Bavasi, do you know?

Mr. BAVASI. Mr. Chairman, no I don't. I'd like to submit that for the record.

Mr. ATKINSON. I will say they need a new airport. That one they've got is pretty bad.

The CHAIRMAN. I ask this question because I am aware that this matter is now being negotiated between the two senior leaders of both tribes. And apparently there is much hope for success in this negotiation, and was wondering if this type of negotiation can be applied to address the remaining problems, or do you think negotiation is not a feasible option in this case?

Mr. ATKINSON. As I understand your question, Mr. Chairman, it would be can the balance of the relocation problems be worked out with negotiation such as they're doing right now on the Tuba City Airport? Am I correct?

The CHAIRMAN. Yes.

Mr. ATKINSON. Sir, Congress directed us to—and gave us the monies to have meetings with both tribal leaders, and their staffs, to try to arrive at a negotiation. And we did that, and there was nothing that really came of it.

I don't want to be a real pessimist, but I do not think that under the present conditions, or even foreseeable future conditions, that there's any way that the two tribal chairmen can sit down and negotiate an end to relocation and take those programs back to their tribal councils.

The CHAIRMAN. Mr. Atkinson, Mr. Watkins, and Ms. Massetto, I thank you very much. We have many other questions we would like to submit to you for your consideration and response, if we may.

Mr. ATKINSON. Yes, sir; thank you very much, Mr. Chairman. It's been really a pleasure for us to appear before you, and we want to thank you for all of your considerations and your courtesies.

The CHAIRMAN. Thank you very much, sir.

Our next witness is the Assistant Secretary of the Department of Interior, Mr. Ross O. Swimmer.

Secretary Swimmer.

STATEMENT OF HON. ROSS O. SWIMMER, ASSISTANT SECRETARY, DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS

Mr. SWIMMER. Thank you, Mr. Chairman.

I have in the previous hearing, submitted a written statement. I would like that to continue to be my statement and make a few comments regarding the proposed amendments and a couple of items that have been discussed briefly here, but we would like to have the committee consider as possible additional amendments.

My personal role in this, and that of the Bureau of Indian Affairs, has been somewhat limited. It's been now for about 2 years, and we became involved in the relocation process primarily at my request and by entering into a memorandum of agreement with the Commission, to share in some of the responsibilities and some of the relocation efforts. Particularly those that were aimed at working with people who were physically resident of the Hopi Partitioned Land, and that maybe going to the new lands, and then working on the subsequent development of the new lands.

We now have a situation where there are 239 households living on the Hopi Partitioned Land, physically residing there. All but 23 of those have signed relocation agreements and intent to relocate, or have entered into an agreement on the new lands.

Senator MCCAIN. All but how many?

Mr. SWIMMER. All but 23. We have 23 who are physically resident of the HPL that have not applied, have not signaled us at all, that they're interested one way or the other.

We have 59, of those total 239, who have agreed to sites on the new land. They have selected sites; they've been to the new land on several occasions, and have selected their homesites, and I believe there are another 15 to 20 that have made tours recently that are also in the process of making commitments.

We have 31 households physically residing on the new lands. Nineteen of those households are people from the Hopi Partitioned Land, people who were physically resident on the HPL. And we are in the process of constructing, on a daily basis, I think we have about 15 more homes under construction there.

As far as the proposed amendments, I'd like to comment on a few. One item in the proposed amendments dealt with the resources of Paragon Ranch. It's our feeling that all of the resources of Paragon should be made available to the relocatees, in one form or another. That the tribes should not share in those resources until such time as relocation is completed, and even at that time it may even be necessary to have a trust fund of some kind to support the efforts of the relocatees, utility bills, pasture improvements, and those things. So, I'm reluctant to support a position

where the tribe could split the revenue and use any of it separate and apart from the relocatees.

On the Bennett Freeze issue, I very heartily support the proposed amendment of getting more access to the Freeze area and providing a method of doing that. I would, however, like to see an opportunity for us to include housing as an available option in the Bennett Freeze, subject to a similar process. The reason I ask that is that many of the Navajo people who are living off of the HPL, part of those 1,300 others that are being counted out there, live in that area, but they are not living in very good conditions, because we've had the freeze on construction, and so they're living in shacks and shanties and whatever else they can get as a roof. They want to live there, jobs are available in that area around Tuba City. And I think that it could ease the housing problem if some of those people, both relocatees and other Navajo and Hopi people who live in that area, if housing could be made available through some process.

I would suggest in the restructure of the Commission, that we also leave the Commission outside of the Department of Interior; that we not include staff under the civil service rules and regulations. I'm not sure that we would really accomplish a goal of solving any abuses that might occur. It would just give us a different mechanism, perhaps, if some of those abuses did occur. But there are also advantages to having the freedom of operating without some of the constraints that would be under a civil service commission, or within the Department of Interior having to do through the myriad of hoops necessary to get decisions made.

I'm concerned about the continuing authorization for legal fees for the Commission. It would seem to me that the Office of the Solicitor should provide those services as required by the Commission. And it would also seem that by this time most of the legal arguments have been made by one side or the other, or have been encountered by the Commission. And I know in my experience of 2 years, I've used the Solicitor's Office frequently and found that they have a very good understanding of the law and the issues here.

On the two things that I had suggested adding, one was the concept of a lump sum payment of a negotiated amount. The figure of $40,000 was included for talking purposes. It could be more, it could be less. Many of the people who are eligible relocatees never lived on the HPL, not in recent history. And many of the people who lived there were children who have literally grown of age during this process, and who became eligible as head of household because they reached the age 18. And many of those moved. Some live here, some live in other States. Many, as was reported by the Commission, live in rental housing, but it's safe and sanitary, and it's because they are mobile. They are not, in some cases, desirous of having a permanent homestead. In other cases, have not been able to afford one, and would not buy where they are, but they'll continue to rent. The objective, however, and the requirement of the law was to provide anyone who was deemed eligible, whether they lived on the HPL or grew up on the HPL, or were associated on the HPL someway, with a decent, safe and sanitary home.

We incurred—the Federal Government incurred that obligation, that liability. It seems to me that instead of building a home for someone that may not even want it, and saying that we have met our commitment that way. That offering the opportunity for people to settle with the obligation that we have incurred with them, they could use the $40,000 in perhaps a much more effective way. As an aside, I find this is particularly a problem as we try to deal with these difficult issues that we see the solution one way, but we don't always find out what's in the best interest of the people that we're trying to solve the problem for.

Another suggestion I would like to present to the committee is that of trying to short circuit some of the litigation. The litigation in this case and cases is interminable. There are daily, causes of action that can be filed by both tribes, by the Commission, by people against the Commission, by individuals. And it almost seems like it's on a daily basis that it's filed. My recommendation, because of the length of time of beginning the process at the District Court level, going through the Circuit Courts and into the Supreme Court, is also a very lengthy process, that we provide through law that the cases involved in this issue, all the litigation, be sent through the Federal District Court, where most of it is now pending, and that decision be a final decision, subject only to the right of appeal through certiorari to the United States Supreme Court. The Supreme Court can accept or reject the application for appeal. That would cut out at least 5 years of time just going through the Circuit Courts, in any one of these case. And there are a dozen or more cases that we could be looking at litigation for the next 15 to 20 years. And that's not solving any problems.

I think the District Court—most of the issues here are factual. They're not going to be reviewed on the law anyway. They're factual issues that are going to be decided by the District Court Judge. If there are legal issues of sufficient gravity, that they need to be reviewed on appeal, permit the appeal to go directly to the U.S. Supreme Court on certiorari, not an automatic right of appeal, but let the Court decide whether the legal issue is such that it should be.

Those are the concerns I have of the amendments and the additions I would like to see. On behalf of the Department of Justice, they have asked us also to include some items that would limit the liability of the United States, particularly as we look at the liability for degradation of the land, and state that our responsibility would begin in 1958, which was the official time of the awarding of title to the land to the tribes. And some other issues that result in some limited liability of the United States Government.

With that, I would be more than happy to answer questions that the committee might have regarding this matter.

The CHAIRMAN. Before I call upon Senator McCain, may I just ask you how you believe we can proceed to bypass the Circuit Court and go directly to the Supreme Court on certiorari? Is it by legislation?

Mr. SWIMMER. Yes; the Congress would have to enact special legislation, or through this amendment provide that that be done. And the Congress can do that.

The CHAIRMAN. I see.

Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman.

Thank you, Mr. Swimmer, for I think some very important input. You did not give your views as to whether we should have one commissioner or three commissioners. I'm sure that was an oversight.

Mr. SWIMMER. I have, of course, worked closely with the Commission, and I have had staff that's worked closely with the Commission. I would agree with Mr. Atkinson that there are certainly reasons why one commissioner could perhaps move the process along. The down side is that if it's someone unfamiliar with the process, it could also delay it. I think it's always easier when you have a single focus working as a commissioner, in this case, to reach a conclusion and take action then it might be if we're trying to get a consensus of three commissioners. But I would say that is an issue that has rarely involved the Commission, and while I haven't been involved in their work on a day-to-day basis, I don't know all of the problems that they may have faced, or the issues around it, I would certainly say that it is something that could work either way. And in some respects, perhaps, could be good to have a single commissioner and have a single focus. On the other hand, there is an experience factor that has to be taken into consideration.

Senator MCCAIN. On the subject of the lifting, or partial lifting of the Bennett Freeze, if you included housing in that, what about the argument that the Hopis have made, and that is that you would simply encourage status quo, and things would work to the detriment of the Hopis?

And please keep in mind that having visited the area, I'm fully aware of the requirements for lifting of the Freeze for health and safety reasons.

Mr. SWIMMER. It's complex. However, if there is an agreement, if it's understood at the outset that there is not going to be relocation once the Bennett Freeze land dispute is decided, then I would say that as housing is constructed there would need to be a recognition by either tribe that if that tribe's housing is on the wrong side of the line, that there would have to be a cash settlement, or a land settlement of some kind made in lieu of that.

But whoever received the land, those people building on that land would be under the governance of that tribe. So if Navajo houses were constructed, and it turned out they were being constructed on the Hopi side of the Bennett Freeze line, those Navajo would have to understand they're taking the risk that they could be governed by the Hopi Tribe, but not have the right to vote in Hopi elections, or participate in the council. And vice versa with the Hopi on the Navajo side. But there would have to be a realization that we are not going to ask one or the other groups to move as a result of the land title being determined, otherwise it could be tragic again. We could allow housing and be right back where we are now.

But I find that in my mind it's more important that people be housed, and especially in this area where there are a few jobs available, and that those situations be addressed first on an individual basis. And that the land disputes between the two tribes, or the governing body, so to speak, be secondary to solving those other problems. I agree with the Senator that keeping it as it is is keep-

ing a lot of pressure on these two tribes to get it resolved. But apparently it's not working. They still are litigating, and based on what I understand in litigation today, it could easily be the year 2000 before they could even be through with their appeals. So I don't think we can let people sit that long.

I would also say, as an aside, that there needs to be recognition of property rights, maybe not fee title rights, but some property rights by individual Indian people out there, had that been done, we would not have the situation we have now and have people treated like chattel. It's the wrong thing to do, and those people as they build homes, need to know that they have a permanent place to live regardless of who might wind up in territorial control of the property.

Senator MCCAIN. Commission Massetto stated that she thought that there was only three possible solutions to this issue; life estates, negotiation between the two tribes, or some land exchange, which there have been several different kinds of proposals, depending on what stage of relocation we're in.

Do you agree with that?

Mr. SWIMMER. I'm not sure, if I thought it out that I would agree that those are the only three possibilities. I think there are three obvious ones that would come to mind. Obviously, cash settlement, too. I mean, this land must have a price on it and I know the Navajo Tribe has opposed relocation as one means of receiving the 400,000 acres back. They should be willing to accept cash. So maybe it's a cash settlement we're talking about.

Senator MCCAIN. Do you believe that it's likely that both tribes would agree on any of the four options, now four options; life estates, negotiation, land exchange, or cash settlement?

Mr. SWIMMER. I've talked to both tribal leaders about the concept of a permanent residence, not life estate, but a permanent residence for those Navajo who are not going to move, unless forced to move. And I think that there is interest, but there is reluctance on both sides until the hand is played to determine what's going to be offered.

My concern is that it's about time to play the hand, because many of the people that our counselors have worked with on the HPL have said on the other side, until we know what these two tribes are going to agree to, we're not going to agree to anything either, and we're going to stay put. And they've stayed put for 14 years, there's no reason why they won't stay put for another 14.

Senator MCCAIN. But according to the numbers that you just testified, all but 23 of those Navajo families living on the HPL have signed an agreement. If that's the case, then it seems to me—I don't know how long the housing and relocation of those people would be required, but it seems to me, then, we're down to 23 families. Is that a logical assumption?

Mr. SWIMMER. No. Let me back up. And this is why the numbers tend to get a little fuzzy.

There are 23 families who have done nothing. They have absolutely done nothing, except for us going to the HPL and finding them, as unregistered, unknown people, we would not know they were there. They're not on anybody's list. They are people who have refused to participate at all. And I would say that they could

be classified as resistors. The rest of the people have, at some time or other in the last 14 years, signed a register as relocatees, indicated a desire to move.

Senator McCAIN. Including a desire to move?

Mr. SWIMMER. Yes; at some time. But some of those people are also not agreeing to move to the new land or any place else. They're the people who said we have signed up, nothing happened, we never got to move, we're not going to do anything; we're just going to stay here until we know what the next step is.

Senator McCAIN. How many of those would you estimate there are?

Mr. SWIMMER. Would move?

Senator McCAIN. How many would you estimate that have signed up—we've got 23 who have never signed anything, of the 239. And then we have a certain number that have signed up at one time or another, but at this point are not willing to move?

Mr. SWIMMER. I would say not in excess of 50. And perhaps a lot less than that. We just recently had a group visit the new land that was from one of the areas that had been considered a traditional resisting area. But they're very interested in the prospects of the new land. We've had some very good things happen on the new lands as far as the people moving there. So I would say not more than 50. So we're talking about possibly 70, 75 families at the most who will remain on the HPL for whatever reason, until some decision is made by the tribes as to their future.

Senator McCAIN. According to my calculations then that leaves about 160 some that need to be moved, of which 59 have selected sites, which leaves us about 100 families that still need to select sites. Is that roughly correct?

Mr. SWIMMER. That's right.

Senator McCAIN. And when would you anticipate that might take place?

Mr. SWIMMER. It happens on a daily basis. We have regular tours. Some people have been down to the new lands three and four times. I think as more publicity is developed on the new lands, as more information makes its way back to the families of those who have moved. There's more interest in it, people seem to be very satisfied with what is happening on the new land, and just on a daily basis we are having people sign up for homesites on the new land.

Senator McCAIN. Well, could you say that it might be one year or two years?

Mr. SWIMMER. I, frankly, would expect to have most of the people have sites identified by the end of this year.

Senator McCAIN. So then we would be down to some 70 families?

Mr. SWIMMER. That's right.

Senator McCAIN. Wouldn't that be the appropriate time to attempt to see what accommodations can be made to those people who simply will not move? Wouldn't that be the appropriate time, would you think?

Mr. SWIMMER. It would be one time. I think that of the 50 or so that I mentioned, some of those would probably go ahead and move. They would select homesites if they knew what their options were. But there's no prejudice. I don't know that it's keeping a

whole lot of other people from making that decision. So it could be—I'm just saying it could be appropriate then, or even now, if a decision could be made. But I don't see that that would prejudice things if we did defer it until that time.

Senator McCAIN. Thank you, Mr. Swimmer.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Mr. Secretary, if my recollection is correct, about 2 years ago the Congress appropriated $45 million for the BIA to work on new lands?

Mr. SWIMMER. $20 million

The CHAIRMAN. It was $20 million?

Mr. SWIMMER. That was a split appropriation between the Commission and the BIA because of the authorization legislation. But we received $20 million for house construction, and the Commission received its $20 million for the general work of the Commission.

The CHAIRMAN. Do you have any of that money left over?

Mr. SWIMMER. About $15 million. Our money has been used exclusively for housing, some expenses on the new land, and things like that.

The CHAIRMAN. How many houses have you constructed with that $5 million?

Mr. SWIMMER. We have 31 households living on the new land, or 31 homes that have been completed. We have 32—I'm sorry, 32 homes have been completed, seven are under construction, and another 15 are awaiting—they've been started. We've signed the contracts on them.

We have developed a number, eight or ten, range units completely where we have cross fencing, livestock watering, roads, wells for the homes. A tremendous amount of improvement in the area has gone on.

The CHAIRMAN. The cost per unit has been over $100,000.

Mr. SWIMMER. It would easily be that, especially during the start-up phase.

The CHAIRMAN. Well, what do you propose to do with the remaining $15 million?

Mr. SWIMMER. We would continue construction of homes on the new land. And the proposal in the amendments that Senator McCain has proposed, is that our phase of this process, what was the pre-counseling, the work on the HPL, the homes on the new land, and the development of the new land, our phase of that would end at the end of this year. And we would turn over our resources that are left, the money that's left to the Commission, and back out of it. We have only been in the process for 2 years. The Bureau of Indian Affairs has not been a player in this until 2 years ago, when we assumed some responsibility for the people still living on the HPL.

The CHAIRMAN. Senator DeConcini has had to attend a conference on Indian Schools with Congressman Udall, so he is not here. He has asked me to submit to you and your office several questions he would like to have your response to.

Mr. SWIMMER. We'd be pleased to.

The CHAIRMAN. I thank you very much, sir.

Mr. SWIMMER. Thank you.

The CHAIRMAN. The problem before this committee has been often described as being adversarial, that the animosity that is presumed to exist between the Navajos and the Hopis are beyond reconciliation.

I have been told and witnesses have so indicated that negotiation is not feasible, or in some cases, advisable. But as Chairman of this committee, I still hope and believe that matters of this nature can be decided by discussions among reasonable men and women. Accordingly, I am inviting both Chairmen, the Chairman of the Hopi Indian Tribe and the Chairman of the Navajo Tribe, to once again join us at the table together, and then proceed from there.

May I call upon Chairman Sidney and Chairman MacDonald?

Every opportunity I have, I am going to see to it that these two fellows get together. At our last hearing, Chairman MacDonald spoke first, and was followed by Chairman Sidney, so this time, may I call upon the distinguished Chairman of the Hopi Indian Tribe, the Honorable Ivan Sidney.

Mr. Chairman.

STATEMENT OF HON. IVAN SIDNEY, CHAIRMAN, HOPI INDIAN TRIBE

Mr. SIDNEY. Thank you, Mr. Chairman, Senator McCain, thank you for allowing the Hopi Tribe to be part of this hearing. It's a very important one, and I believe that both of you—I commend you for your foresight on behalf of both tribes to begin to look at the most important issues affecting the tribe. And I join you that I will continue to do my best to work with the Hopi people to find a solution.

I also want to state from the beginning that this hearing, I believe, brought an issue to me more dearly than anything else, that I have been here to Washington so many times, and this trip I find myself all by myself simply because of the expense of coming back and forth on this very dear heart issue.

I find it very appropriate, Mr. Chairman, that I have not wished to speak from any notes, that I feel that we have discussed this so many times, that we need to—we both represent traditional religious people, and Hopis having one of—having their respect for their religion that at times we have to step aside from the political fronts that we have to all deal with, and to deal directly with them on one on one.

Also, Mr. Chairman, I will not take time with this committee to talk about the hardships of the Hopi. I believe that we have suffered along also for many years, and today is a time for leadership for both tribes, and with your assistance, to go forward. And that is why the Hopi Tribe has taken a position that the law is the law, let us go forward; let us carry out the issues.

Mr. Chairman, we submitted a statement after our hearing in December, our last hearing in December, and I have proceeded to go forward hearing from yourself and Senator McCain. I have since visited Chairman MacDonald and I appreciate for his openness to me, that I believe as far as the Hopi position is concerned, that we have agreed to an airport site in Tuba City. That is now left to the

aviators to determine the visibility of the site and to continue to go forward. I appreciate Chairman MacDonald for that spirit.

Second, that both tribes, because of hardships, have been working on a road project called the Hopi-Navajo Turquoise Trail. On my visitation with Chairman MacDonald in Window Rock, he has had his roads committee and my roads committee, the Hopi Tribal Council's Road Committee, meet in Phoenix one time, and has spent two days on the Hopi Reservation on that road project.

Another subject of interest, Mr. Chairman, is that when I became the chairman 6 years ago, there was over 20 lawsuits filed by the Hopi Tribe against the Navajo and enjoining the United States. I have to agree on Senator McCain's efforts to expedite this whole matter. I have found that we were in the past, our past lawyers, were the ones determining the cases in this whole land matter. That I have given direction to our new law firm to study all the cases, that we go forward, and I am happy to report that the Hopi Tribal Council is making the decisions in behalf of the Hopi people, and not lawyers. Today we have about 10 cases pending. Just last week the Hopi Tribal Council authorized to dismiss two motions that we have filed before the Federal Judge Carroll in Phoenix.

I have a schedule here, which I'm going to submit to the record, that we have a Hopi Proposed Schedule to Expedite Final Resolution of our Pending Motions. We are awaiting the final decision by Judge Carroll. This motion was filed—or the pending cases were also attended by the Navajo attorneys, and according to this schedule, most of them will be taken in 1988 and 1989. This, we feel, is our commitment to put a resolution to these cases finally and once and for all.

The CHAIRMAN. Without objection, that schedule will be made part of the record at this point.

[Above-mentioned schedule appears in appendix.]

Mr. SIDNEY. Thank you, Mr. Chairman.

Also, Mr. Chairman, I have here a transcript of the status hearing before the Honorable Earl H. Carroll, Judge, Federal Court. And I will also ask to submit this as part of the record, to indicate the Hopi's willingness to go forward and to expedite the cases. I have a provision here that is most interesting to me, and I'm pretty sure that Chairman MacDonald has a copy of this. And I feel that to reemphasize the Hopi's point, Judge Carroll stated in this transcript—and I'll read it. Just take a few minutes to read what he said:

> Well, I don't think you put it in the fourth element assuming you had three. And that is really the attitude of the parties, and particularly the Navajos. I think to ever come to a resolution of that issue, you are a stranger here to me, but not to these proceedings, I'm sure. And I have said it before, and the cases speak of it repeatedly, and that there has never been a benefit to the Navajos to resolve these cases. That is true today. It will be true 4 years from now. So I'm not damning you. I think you come with a very cooperative attitude. I don't think you probably come with a very cooperative client. And I just don't expect any long range cooperation to resolve the matters that we speak very comfortably here today of being able to do.

That's really been the position of the Hopi Tribe, is that we call on the leadership of Chairman MacDonald to begin to expedite the issues. That's why I stated, Mr. Chairman, that we appreciate Senator McCain's concern to expedite. This record will show in itself

what our attorneys have been directed by our Council to go before the Court to resolve these issues, because I've heard the statements before I on the 1934 case. It will indicate in this record that Judge Carroll is considering that to come before his Court in March 1989. We need to confirm that, so that date is there. Because of that not happening, we have been subjecting all these people to all the hardships that they have been going through. We're ready to go to Court. We're ready to resolve these issues. And that is why the Hopi Tribe is very concerned about the 1934 case issues becoming entwined into the remaining of the 1882 cases which include the relocation program.

The CHAIRMAN. Without objection, that transcript will be made part of the record at this point.

[Above-mentioned transcript appears in appendix.]

Mr. SIDNEY. Mr. Chairman, as I indicated to our Senator at a previous discussion, that I find myself, as the leader of the Hopi people, that if you ever come to the Hopi Reservation, Mr. Chairman, and I take you to a most deplorable condition home that one of my people is living in, I hope you turn to me and say, Chairman, why are you allowing this person to live in that condition of a home.

I think we need to put aside, to rest, of using these peoples as pawns of what we foresee of benefits to our treasury. We need to begin to look of how to resolve issues. Indians are best to resolve issues themselves.

I wanted to reemphasize one point here. That is, that I am only portraying what my constituents have asked me to do. And we have been very cooperative. We've shown that. Today there are no impoundments going on by the Hopi Tribe. Today there is no one out there harassing anyone by the Hopi Tribe.

Chairman MacDonald, you wrote me a letter three weeks ago requesting a road nine miles, which the Hopi have to grant a right-of-way to Rocky Ridge School. I have submitted that to the Hopi Tribal Council. But why am I saying that here? It's simply because my constituents would take such a letter and consider it, but if laws are going to be changed here, my constituents are going to say at some point to me, why should we accommodate these requests if those decisions are going to be made somewhere else. That's why I make that point here. Because we need to continue to cooperate, and that is why the Hopi's position is let's continue with the relocation program as it is.

I have yet to hear a request from the Hopi of what decision is to be given on those that are to remain. Until then, let's respect those that want to continue their livelihood and have signed up for relocation benefits.

I stated here in the December hearing, that if the McCain amendments of the one commissioner is to expedite relocation, it is very difficult for Hopi to oppose that, simply because the Federal Relocation Commission have been the only avenue, up to now, to ensure that the Hopis will benefit from the lands that have been restored to them. But I find today, with the Court proceedings going on, with hopefully the cooperation between the two tribes, the mending that has to be done, I have to look very closely, very

respectfully, Senator McCain, about how much time we're going to lose again in this transition.

I feel that the commissioners today, need to have an accountability, because I have heard again this afternoon here, of opinions again being expressed, rather than what the law really is in working with both tribes to carry this forward. I feel that there should be a given time if the three commissioners are to remain to study what they are capable of proving. And after a given time, then consider what Senator McCain is saying. Maybe that should be considered. But the Hopi Tribe's position is anything to expedite the relocation in a humane way. We really need to look at that. We really need to consider that we continue to go forward.

On the amendments, as far as the plans are concerned, that has been a concern. I feel that as far as reporting is concerned, that every time that the Federal Relocation Commission comes before this body or any body of Congress, that I would recommend that the Relocation Commission, or Commissioner, sit right between the two of us. We also be subject to questions from this body, which you rightfully have to do in behalf of the American taxpayer who has contributed so much up to now. Because if I, as the Chairman, have any way of contributing or effecting the impeding of the Relocation Commission to carry out their job, then I should know that. Because Chairman MacDonald, I have heard Navajos say that they're unable to receive land assignments. And that they're continued to be told that they don't have to move. And if such incidents are there to prevent the Relocation Commission from carrying out their job, I think that's what we really need to do.

As far as the legal fees are concerned, Mr. Chairman, I wholeheartedly supported that statement. I believe I said that five or six years ago when I became Chairman. But up to reviewing it today, I feel that what our attorneys are doing to expedite the relocation process, maybe we can escalate the payments to these lawyers and eventually get it to where it would be completely off the books. But we feel that as a small tribe, we need some support, but we want to show to you that we are trying to expedite. But it's going to take cooperation.

I don't feel that I have opposed the negotiations, Mr. Chairman. I believe it's more like we want to cooperate, because further negotiating for the Hopi Tribe, pretty soon we're going to negotiate everything away. We have 185 land assignments in the new lands. The people are waiting, and I feel that I'm holding the plug into the dam of the people. I don't want them to move out to cause conflicts, because the Navajos are still awaiting relocation. But I'm running out of fingers in that dam. One of these days, our people are going to say, we've waited long enough, we're going to go. But I feel that the law is the law, and Hopis are going to comply with that. And politically I have stood pretty much alone, and up to now I have nothing but praise for what you, as the Chairman of this committee, and Senator McCain are really trying to do.

In realizing the time constraints, I have a statement I would like to submit for the record, if the record is going to be kept open, Mr. Chairman. We just got a copy of the Administration's statements. We were told that because of some OMB policies that they couldn't share that with us. I just heard it here. I don't know how long the

record is going to stay open, and I understand there's markup tomorrow, and it don't give us a lot of time. So, I'd like to submit that statement providing that the record is going to stay open, Mr. Chairman.

The CHAIRMAN. We will keep the record open so that your statement can be submitted, sir.

Mr. SIDNEY. Thank you.

And also is the markup still scheduled for tomorrow?

The CHAIRMAN. It is scheduled at this time, but that matter can be discussed also.

Mr. SIDNEY.All right

I'm very much concerned because of our ability to respond and also to work along with Senator McCain so that we can have a good sense of direction.

Thank you very much for allowing me to provide remarks on behalf of the Hopi people, Mr. Chairman, and Senator McCain.

[Statement of Mr. Sidney appears in appendix.]

The CHAIRMAN. It is always good to have you with us, Chairman Sidney.

And before we ask questions, may I now call upon the distinguished Chairman of the Navajo Tribe, the Honorable Peter MacDonald.

Mr. Chairman.

STATEMENT OF HON. PETER MAC DONALD, CHAIRMAN, NAVAJO TRIBE

Mr. MACDONALD. Thank you very much, Mr. Chairman, members of the committee.

I would like to comment on the amendments proposed by Senator McCain and also by the Administration.

First I want to thank you, Mr. Chairman, for taking an active role in this very pressing, as well as one of the most difficult issues facing two tribes in America. And for you, Senator McCain, I want to state, as I have stated back in the December 9 hearing, the Navajo Nations support for your efforts to make the Relocation Commission and BIA more accountable, and responsive to the needs of the Navajo families that are faced with the heart-wrenching trauma we know as relocation. We are encouraged to see that some of the issues are finally being addressed. But as I also stated before, all the issues that have arisen as a result of these land disputes must be comprehensively resolved so that we all can focus our energies and resources in a more productive way.

And I also appreciate some of the statements made here by Chairman Ivan Sidney with respect to that it's always good to leave Indian issues and Indian problems to Indians. Back in 1972, 1973, and 1974, I have come before this body, before then the Administration, and plea for Indian solutions to Indian problems, as has been stated here by Chairman Sidney. But no one wants to listen. They say no, we will solve your problem by passing a law called Public Law 93-531. So no matter how much we say, and how much we want to have Indian solutions to Indian problems, we are saddled with this Public Law 93-531, which is not my solution, which is not, I'm sure, the Hopi solution. If we had not made that

law, and had said at that time, Congress would have said, look we're not going to touch this thing with a ten-foot pole; Indian solutions to Indian problems, you guys go back to your respective reservations and solve this problem, I'm sure we would not have been faced with all the misery and suffering that is going on every hour, every second on the Navajo Reservation.

So right now to go back and say Indian solutions to Indian problems really suggests that we repeal what has happened. And to say, look, we're not going to bother you any more, and go back and do your own thing.

Now, back to the issue at hand. One of Senator McCain's amendments would establish a rehabilitation fund using income from the Paragon Resource Ranch for the benefit of Navajo relocatees. Relocation is a Federal program mandated by Congress and imposed on the Navajo people. This program carries with it Federal promises and responsibilities of enormous magnitude. The Navajo Nation remains ready and willing to assist in the planning and decisionmaking that must accompany this program, but it must remain clear that the Federal government must satisfy its obligations under the law. I'm talking about Public Law 93-531.

As we stated in December, we support Senator McCain's acknowledgment that the situation in the 1934 area, the so-called Bennett Freeze, must be changed. I know you and your staff have visited that area and are aware of the magnitude of the problems that exist. Since 1966, 10,000 Navajos have been forced by the Federal government to live in appalling conditions. Your amendments would permit limited changes regarding infrastructure improvements. However, they do not address the single most pressing need facing these families today. That's adequate housing, the need for electricity; the need for water for their use. It is true that this matter is now before the courts, where I might add, it has been since 1974. With a few strokes of a pen you could alleviate this tragic situation, yet protect the rights of the parties now before the courts.

Turning now to the amendments proposed by the Administration. Although we are happy that the Administration has finally recognized the necessity of a comprehensive settlement, its proposals are woefully inadequate. Both the time it took to develop the proposal and its substance show, once again, the inability of the BIA and Relocation Commission to properly serve the relocatees.

This committee held hearings on this bill over four months ago. At that time the Administration refused to comment, even personally, on Senator McCain's proposals. At the Administration's request, the hearing record was held open until January 15 so they would have time to submit comments. During that period, the Navajo Nation filed testimony laying out in detail the problems we have experienced with Federal planning and execution of the relocation. The Hopi Tribe also met the deadline. January 15, however, came and went without a work from the Administration. Not until the last few weeks has the Administration come forward with its proposals.

If the Administration's proposal actually addressed the issues, perhaps it would have been worth the wait. However, as we have heard here today, and as with so many other actions taken by BIA

and Relocation Commission in the past, this proposal serves the convenience of the bureaucrats at the expense of Navajo families.

Four provisions illustrate my point. First, the Administrative proposal which gives authority to impound tribal trust funds amounts to declaring that the trustee, the BIA, can confiscate tribal funds from one tribe to be paid to another tribe. I want to say in this regard, that the Navajo Nation, in 1985, paid $460,000 to the Hopi Tribe, while reserving our right to appeal the determination of the amount owed. According to our appraisers, that amount exceeds what we actually owe by nearly $100,000. We are now appealing the Interior Department's determination. We oppose allowing the Department to impound this money from the trust fund, before or after the appeals process is completed. Trust funds have never been subject to such an impoundment, and it would set a dangerous precedent for all tribal governments were we to allow it in this case.

Second, the Administration has proposed that Navajo families who cannot leave the Hopi Partitioned Lands because of their religious beliefs or for other reasons be given a one-acre homesite lease with no grazing rights. One acre of desert land. How does the Administration expect these people to eat? Without grazing rights they would not be able to survive, because that's all they know and that's their way of life. Many of them are elderly. There are no jobs available for them in the area.

At one time, many years ago, Navajo families had an average of 5,000 acres to graze their sheep, cattle and horses. Then, through government livestock reductions, back in the 1930's, they were reduced down to 1,000 acres to graze their sheep. Now the Administration heralds the allocation of one acre to families. This really concerns me, because I don't know what the plan is yet. To me to subject the Navajos where they once existed economically on 5,000 acres, down to 1,000, down to one acre, is equivalent to let's say: All of us sitting in here who are used to living in a house with a kitchen, with a living room, with a bedroom, and with a bathroom, and all of a sudden someone came down and said to all of us, you will no longer use the kitchen, the living room, the bedroom, the bathroom, but we'll now confine you just to live and use the closet. And you're going to survive.

This is how harsh it is to ask people whose way of life has always been livestock, not only livestock but the whole religious and cultural attachment to that land, and say to them from here on out, you're going to be confined to just one acre of land. The Administration proposes to put these people, so-to-speak, in a closet, and saying that somehow these people are going to survive.

Proposing at this late date that Navajos remaining at their traditional homes receive one-acre homesites illustrates once again the incredible lack of understanding that the Relocation Commission and the BIA have of the Navajo people, their culture, their religious beliefs and means of survival. When you reflect this and sit back and look at this, you cannot help but feel that people who talk that way, make those kind of suggestions, have no heart, seems to have no feeling, no sense of fairness. They don't understand that this is a direct assault on the Navajo way of life, on the Navajos' right to enjoy their religion, and to make a living.

Third, the Administration proposes a $40,000 cash buyout for people who have moved but not yet received benefits—that is the so-called Navajo refugees. The Administration should be ashamed to make such a proposal. For the bureaucrats that would be convenient, I'm sure. The cost of relocation is now approximately, all of know, over $100,000 per family, so this proposal obviously is intended to save about $60,000 per household. For my people, it would be disastrous.

This is a cruel thing to offer a desperate people. When a family accepts this temptation, they are then left with nothing; as far as the government is concerned, they are finished. They are out of the system. But in fact, the problems of these people will have only just begun.

In the early years of the relocation program many Navajo families were moved off the reservation. They were approached by unscrupulous business people who convinced them to mortgage their relocation homes for money. Having no jobs they were unable to repay the money and consequently lost their homes, their house and everything. With a cash buyout, the Administration is proposing a return to the days when Indians got blankets for their lands and their minerals.

Fourth, the Administration plays with figures regarding livestock and the carrying capacity of the new lands. The relocatee families were promised 100-sheep units. This promise has not been honored. In fact, 100-sheep units are less than one-third of the level required for subsistence for a family of four.

We have provided this Committee with many other examples of the Administration's inadequacy in our written testimony. The list is too long to read here. We have also written our objections to the Administration's other new proposals and have submitted them for the record today.

The CHAIRMAN. Those comments will be accepted into the record at this point.

[Navajo comments appear in appendix.]

Mr. MACDONALD. In summary then, Mr. Chairman, I believe that the structural changes Senator McCain has proposed for the Federal relocation agencies must be adopted and that the individuals currently responsible for relocation must be replaced. We support a single commissioner who is independent of the BIA, but reports directly to the Secretary of the Interior. We believe the new commissioner should have budget authority from the Congress that is separate from the rest of the Department of Interior appropriations.

Senator McCain has proposed amendment to provide for the new commissioner to make legislative recommendations within six months. We support that provision. I hear the Administration and the Congress have stated that there will be no forced relocation, that all the relocation that has taken place has been voluntary.

We hear the explanation here today and other times, that relocation really is voluntary. Let's be realistic. What is voluntary about relocation when government comes in and takes your sheep? What is voluntary about a situation wherein you are told, you cannot build a house; you cannot have a running water, or toilet, or septic tank; you cannot lay electric lines or make other improvements; you cannot do this, you cannot do that? What is voluntary about a

situation in which an unsuspecting population is continually and persistently harassed and intimidated by counselors from the government, and by representatives of a neighboring tribal government?

I have brought with me today two traditional Navajos from the affected area. With the Committee's permission, Mr. Clarence Blackrock, who is from the heart of this so-called Hopi Partitioned Land, Cactus Valley, he would like to say a few words and submit a statement for the record, Mr. Chairman.

The CHAIRMAN. In fairness to Chairman Sidney, because we did not advise him that he should have other witnesses to accompany him, may we request that the statement of your traditional members be submitted at this time, and invite Chairman Sidney to have other statements for other witnesses if they so wish?

Is it a long statement?

Mr. MACDONALD. That being the case then, I will just make a few short remarks here relating to what—

The CHAIRMAN. Without objection Mr. Blackrock's statement and other tribal statements will be made part of the record at this point, and it will be so printed.

[Navajo Tribal statements appears in appendix.]

Mr. MACDONALD. Thank you, sir.

Mr. Chairman, we must step outside of where we are and think hard to imagine the degree of fear that this kind of unrelenting pressure brings to the minds and hearts of these people. What is voluntary in such a situation?

I want us to look at Mr. and Mrs. Blackrock. I'd like for them to stand. These are the people we are talking about, not Navajo Nation, not Peter MacDonald, not the vast land of the Navajo, not the oil and gas that the Navajos may have, but human beings like Mr. and Mrs. Blackrock, whose only way of life is to herd sheep; whose only support for mental well-being is to worship and stay on the land from which they came.

Let me give you another example of how BIA works ruthlessly on the minds of these people.

No. 1, even though a Navajo who is living in the HPL, they say and refuse to move, and say don't bother me, I don't want to move. They relentlessly come to the home, posting signs and counting the sheep, intimidating them. To the point where people live in fear every hour of the day, crying all night long—it goes on today.

No 2, just 2 weeks ago, a lady in the HPL area, her name is Jenny Manybeads. She's about 95 years old. She suddenly discovered that her children were gone. They have been enticed to move to so-called new lands. And the old lady found herself all by herself. She began to ask, where are my children. A neighbor told her that your children have moved. She went into depression. She finally—she couldn't take that news any longer, and had a stroke, break-down. They took her to the hospital in Tuba City. As she was laying in this bed very sick, BIA workers who are busily trying to put people on the new land, had a piece of paper for this very, very sick woman to sign and telling her that if you sign this, Mrs. Manybeads, you will get well, because when you sign this we're going to take you to the new land. To me, this is heartless. And that's what Mr. Swimmer and his people and the Relocation Commission are

using to put fear into these people, to intimate them 24 hours a day.

I have heard it said that Congress cannot allow Navajo people to stay on the HPL. I ask, why not? In every other Indian land claim that Congress and the courts have resolved in recent history, the Indian claimants have received money as compensation. Current residents of Alaska, Maine, and Florida have not been told that you must move. In those cases, laws were passed specifically to clear property titles for non-Indian current residents with regard to how long they may have lived there. Only the Navajo people have been told they must move and had their lives restricted to such an extent that many have had no other choice. I have to ask, if the Hopi Tribe had claimed Flagstaff, or Winslow, or Phoenix, would Congress have relocated the current residents of those cities? I'm sure, no.

The courts in 1962 determined that both tribes have an equal and undivided interest in the JUA.

First, in recognition of that, we have offered to the Hopi's compensation that is better than money. We have offered land, good grazing land with a much higher economic development potential than the lands we would ask to be returned. This is the type of solution that the new commissioner and Congress must consider in future legislation. The constitutional and human rights of Navajos who cannot move from the HPL must be respected and addressed. Human rights must take precedence over property rights. Those Navajo families cannot be forced to move. The Navajo people, nor any human being should be forced from their way of life to leave ancestral homes, leave the bones and the graves of their ancestors.

Second, the many lawsuits pending between the tribes must be resolved, sot hat both tribes and the Federal government can look to the future and not to the past.

Third, the United States must carry through with its promise of relocation benefits for the refugees who have moved and not received benefits. They deserve the decent housing and other benefits and services they were promised. In the meantime the Navajo Nation is attempting, with whatever little resources we have, because we're not only responsible for the people in the JUA area, but the rest of the 200,000 Navajos who live on and off the reservation, but with these limited resources, we are trying to meet their emergency financial, legal and counseling needs. But the United States cannot turn its back on these people.

Fourth, the long-term needs of the Navajos who have suffered from relocation must be addressed. The 1974 Act promised roads, schools, health and community facilities. The statutory freeze must be lifted and rehabilitation needs in that area must be funded. The Navajo Nation stands ready to assist in those projects, but we cannot do it alone.

Mr. Chairman, what is this dispute really all about? Why do we constantly come back here, year after year? As I approach the conclusion of my statement, I want to address some broad misconceptions and untruths that have been said about this dispute. As I've said earlier, this is not a dispute between two tribal governments. This is not a dispute in which the Navajo Nation somehow accrues

greater power or in some way enriches itself; quite the contrary. It is a dispute which is a drain on my people.

This is not a fight between tribal leaders, it has nothing to do with individual ego or personal gain. I say to you with the utmost conviction and from the bottom of my heart, that this is truly a dispute between innocent traditional rural families, who have lived on the JUA for generations, and that of the U.S. Government. The Government has undertaken a massive program of uprooting a traditional people against the counsel of anthropologists, sociologists, and other independent observers who know the impact of such a program. Truly, this is an issue which gets to the core of the trust responsibility of the Government of the United States to Indian peoples.

I have heard it said that the equal partition of the JUA was essentially a fair division of what the court in 1962 called an equal and undivided interest in the JUA by both tribes. Let me appeal to your logic and fair play: What is equal in a situation in which 2,500 Navajo families are being forced off their land, and only 14 Hopi families had to be relocated?

Someone has said, the law is the law and Navajos must move. That Public Law 93-531 is the law today, is very clear to me, is very clear to my people. We probably know it better than anyone else. But there have been many laws that were unjust, and our society looks back on those laws with embarrassment, even with shame. Public Law 93-531 is precisely such a law.

We live in a society which provides for orderly changes in the law. Simply to throw up our hands and say, the law is the law, is a hollow and lame excuse to avoid an honest examination of the human impact of the law and its effect on the people. When a law is seen to be so devastating, it must be changed.

For 14 years we have seen the effects of this law. Nearly $210 million tax dollars later, hundred of failed relocations later, and scores of family break-ups, incidents of alcoholism, drug abuse, mental anguish, despair and suicides—with all this, we simply do not have any excuse to let this continue.

In our hearts, we know that relocation is wrong. Chairman Inouye, in the last hearing, on December 9, Assistant Secretary Swimmer himself said that he would not recommend to this government a program of relocation to satisfy some future division of the Bennett Freeze area. In other words, he indicated that it would be a mistake to adopt such a policy again in the Bennett Freeze area.

Now let me ask you: Why is a policy unthinkable for the future, the very same policy which we want to impose upon thousands of Navajos today?

Are we saying, yes, we know relocation is despicable, we didn't know what we were starting in 1974, but we're going to apply it to Navajos anyway, because we're going to say to the Navajos, you're it; you'll be the only ones to be subjected to this? I must insist that this is a human rights issue. The most profound human rights issue in this Nation today. It must be addressed, and America must come face to face, not merely with what it has done, but with what it is doing now.

Mr. Chairman, it is not too late to stop this tragedy. Relocation is less than one-half complete, even though Assistant Secretary Swimmer says that we only have 50 more families to deal with. Thousands of Navajos can still be saved. Let's stop this senseless suffering right now. In our hearts we know that this policy will be seen in history, if it continues as it is today, as a disaster.

On behalf of the Blackrocks and all the people whose lives have been disrupted, diminished and even ended as a direct result of this unjust law, I plead with you, once again today, to hasten the time we can lift our eyes and our hearts and say, we saw injustice and suffering, and we ended it. We should not wait another day to stop the suffering, to stop all this mental anguish of those innocent Navajo people who have done no wrong, have not broken any law, to simply have been born on the wrong side of the line. The land is not going anywhere, but people are dying and their spirits are being destroyed every minute and every day.

I want to thank the committee for allowing me to speak to you, from my heart today. And I also would like to ask the Chairman, if I will be allowed to submit additional statements for this hearing.

[Prepared statement of Mr. MacDonald appears in appendix.]

The CHAIRMAN. Without objection, any statement you'd like to submit, you may do so. It will be made part of the record. In fact, I have before me a statement of residents of the Hopi Partitioned Lands and the Big Mountain Legal Office. Without objection, this statement will be made part of the record at this point.

[Above-mentioned statement appears in appendix.]

The CHAIRMAN. Chairman MacDonald, as you are aware in my opening remarks about 15 months ago, I suggested that solutions on Indian problems made in Washington have too often failed, and that I will go into Indian country to seek Indian wisdom, and seek Indian solutions.

However, in this case, my predecessors on this committee acted about 14 years ago and came forth with this solution on relocation. It is true that the relocation process is not complete, but whether we like it or not, at this moment, that is the law. And we will have to deal accordingly. And on that point, I think you will join me in commending Chairman Sidney in not pursuing this matter. Under the law, he could take action to see that certain people be ousted. He has not done that. The committee wishes to commend you, Chairman Sidney.

Mr. SIDNEY. Thank you, Mr. Chairman.

The CHAIRMAN. Needless to say, this matter before us has been a matter that has pained me for the past 15 months, ever since I assumed the Chairmanship. I wish I had the wisdom of Solomon and give you a solution, but when one deals with deep seated cultural differences, and religious beliefs, I think the law is very inadequate. However, even though it is inadequate, we have the obligation to take some action.

Tomorrow we meet again to discuss this matter. And if the committee feels that action can be taken, action will be taken. The statements that both of you have made have been most moving. I think it would not serve any good purpose to compare who suffered the most, because I think history will show that the Hopis have

suffered as much as the Navajos. And I suppose they'll continue to suffer for a little while. We will try to minimize that suffering.

May I call on Senator McCain, if he wishes to question?

Senator MCCAIN. Mr. Chairman, I again would like to express my appreciation to you, in what I think was just a very important statement. And frankly, I know that the people in the State of Hawaii may never know or appreciate your efforts on this issue, but I can assure you that those of us from Arizona are deeply appreciative of your patience and your understanding of this extremely complex and difficult issue.

Mr. Chairman, I'd also like to acknowledge the presence here of Councilman Percy Deal, who is a very outstanding representative of Indians and non-Indians alike in the Northern part of our State, and also Councilman Richard George, who's in Tuba City, who are also here as observers.

Mr. Chairman, I won't have any questions. The hour grows late. I'd like to just put this issue a little bit in some prospective. First of all, I think the very eloquent statements on the part of both chairmen. I believe that both chairmen and I have developed a good strong relationship over the past years, and although we certainly have not agreed on several occasions, and will not agree in the future on specific issues, I think we share an atmosphere of mutual respect and concern about this issue.

I'd also like to point out that, Mr. Chairman, I seek no sympathy here. There's no upside for me on this issue, politically. There's no gain to be made by consideration of these amendments. And I hope that both chairmen understand that, as I believe they do, that I'm only trying to do what I can to help alleviate the pain and suffering which has been so adequately described by both chairmen here. And I'm not sure that these amendments that I have, Mr. Chairman, are a way to solve—in fact I'm sure they aren't. I'm not even sure that they're a way to alleviate the problem. It's my judgment at this time that they are, and if in your judgment, Mr. Chairman, we need some more time to consider these amendments, or to receive input, I would be more than happy to delay that markup, if you feel it's necessary to do so.

Let me also say, in response to both chairmen, I am in agreement that the 1974 Act, in the opinion of anyone that I know, was a mistake. But I can't go back, nor can we go back and revisit that issue, nor appeal that legislation, even if we would like to at this time. Too many events have taken place. There's been too much relocation. There's been too many issues addressed, that we are at a point in time where I believe that simple repeal is simply not a viable option. I do believe that expediting this procedure until we get to a point which in my view may be the end of this year, or early next year, where we are down to a certain number of families, who I think we could address their specific situations, at that time would be entirely appropriate to do so.

Now, I say that at this time with the information that I have. I have no commitment from either chairmen that they would be willing to reach agreement. But what is clear to me, at this point, and I would be glad to be corrected, that the three recommendations of the Commissioner, who I respect enormously, Sandy Massetto, that life estates, negotiation, or land exchange are the three

issues, are the ways of solving this problem, are not viable options at this time. We've been the negotiation route. We've talked about permanent estates, and we've talked about land exchange to ad nauseam. And we have not reached a conclusion in which all parties are in agreement. Now perhaps one of these will be a viable solution at a later time.

But at this point in time, in my view, I think that the amendments which I have proposed for the consideration of this committee—and please remember, Mr. Chairman, that we will go from a markup to the Floor of the Senate, to the House, to Conference. At all those stages there will be ample time for input. There will be time for input and changes. I'm sure you're aware that whatever this committee marks up would not be a final version, and we also are very aware that Chairman Udall has a deep and considerable interest in this issue, and will be making his, as well as Senator DeConcini, Congressman Rhodes, and Congressman Kyl. But it's my view that we need to do some of these things, such as partial lifting of the Bennett Freeze; such as reducing some of the costs to the taxpayers, which we also have an obligation to. Judge Carroll mentioned an example of one case. It was a $20,000 item, there was $500,000 in legal fees spent. We have a greater obligation to taxpayers of America than to see that continue.

So I would suggest that you consider these amendments. I would be glad to have your continued input, and if in your view they will help the process at this point in time, then I hope that you will give them your favorable consideration. If not, I would be more than happy, again, to visit with you in any situation, either here or in Arizona, so that we can perhaps reach as much agreement as possible.

I sympathize with you for having to make all these trips to Washington, when there are so many issues and challenges that face you in your leadership roles. I also happen to believe, Mr. Chairman, that you made a very important beginning a few months ago when we met in your office and moved forward on the Tuba City airport. I have the highest regard and respect for these two chairmen, and I believe that someday the day may come where we can resolve this issue as it should have been resolved in the first place between the leaders and the people of the two tribes.

I would be glad to hear any response to those comments by either Chairman Sidney or Chairman MacDonald.

Chairman Sidney, would you have any comments?

Mr. SIDNEY. Well, Senator McCain, I do appreciate, again, your concern and what you have just expressed. And we're most appreciative of your openness to us, and we want to continue the dialogue and I hope that what I have provided this committee and your office on our efforts to minimize these lawsuits. We are doing it, we're going to continue to do that. And I'll say again, that I don't want to prolong this hearing by, you know, I feel the people look at me in the leadership of what sufferings we have. I feel that's for me and the Hopi people to work on, and I'm just looking at expediting this issue, and we will continue to communicate with you and the leadership of this committee that this will be resolved.

Senator MCCAIN. Chairman MacDonald.

Mr. MACDONALD. Senator McCain, again, I want to thank you for your initiative. I know it comes from the heart, from personal observation of what is happening to individual families in the areas affected. So I know that you mean well. I know that it comes from the heart.

I also want to thank Senator Inouye to take this issue, no matter how difficult it is, and how hard it is, and continue to have hope, continue to have faith in the fact that reasonable people can come together and see things as they really are, and begin to resolve this human suffering that goes on every day whether it's Navajo or Hopi. And I certainly will do whatever I can in areas of agreement that Ivan Sidney and I and the two respective councils can come together to address and resolve some of the immediate needs and issues that affects both tribes.

Senator MCCAIN. Thank you, Mr. Chairman.

Could I just mention also, one more item? A few weeks ago I had the pleasure of experiencing an unforgettable afternoon up on the Navajo Reservation, where the dedication of an arch, named in honor of Peggy Goldwater, Senator Goldwater's widow. Senator Goldwater's entire family were there, and all of that was made possible by Chairman MacDonald and the Navajo Tribal Council, which I and many other Arizonans are deeply grateful.

The CHAIRMAN. This issue before us is one of those that politicians avoid. It takes much political courage to enter into this fray. It takes much more political courage to suggest a solution to something like this, because when the solution pleases one, it would obviously displease the other.

Senator McCain has demonstrated his courage time and again. He did so in war, and he now does so in peace. And whether the solution will be feasible and correct, only time will tell. But I can assure you that this committee being well aware of his sincerity and integrity will consider his proposal.

I will ask him most respectfully, if he would permit me, as Chairman, to set this aside until the 28th of this month when a markup has been scheduled. I will keep the record open for ten additional days to permit those of you who wish to respond to the Administration's reaction to the McCain proposal. And if you do have any other statements, you'd like to submit, please feel free to do so.

With that, I would like to thank all of you for spending this afternoon with us. I hope that on April 28, we will have some solution. I can assure you that there are many provisions in this McCain proposal, and on April 28, we will be acting on some of them at the least.

Before we close, I would like to announce that today we had some happy developments. The Mayor of New York City, the Governor of New York, the Attorney General of the State of New York, the New York Congressional Delegation, Senator Moynihan and Senator D'Amato, and the members of the House, have all joined together with this committee in support of creating a National Museum for American Indians. And so tomorrow we will have our markup at which time we will substitute the so-called Moynihan proposal, which also incorporates Senator Bingaman's suggestion that we have regional facilities to exhibit these artifacts and objects that are presently in the Heye Foundation. It is a great

step forward, and I look forward to that day when all of us can join in dedicating the new museum for the American Indian on the Mall of the United States Capitol.

[Applause.]

The CHAIRMAN. With that, this hearing is adjourned.

Mr. SIDNEY. Thank you.

[Whereupon, at 5 p.m., the committee was adjourned]

APPENDIX

Additional Material Submitted for the Record

PREPARED STATEMENT OF HAWLEY ATKINSON CHAIRMAN, NAVAJO-HOPI INDIAN RELOCATION COMMISSION

During Fiscal Year 1987 the Navajo and Hopi Indian Relocation Commission (Commission) submitted a proposed re-authorization bill addressing continued funding to complete the Relocation Program. A similar bill is currently before your Committee as S. 1236. In December of 1987 Senator McCain proposed certain amendments to S. 1236 and on March 8, 1988 a revision of those amendments.

Although we share Senator McCain's desire to expedite the completion of the Commission's responsibilities under Public Law 93-531, we believe that the attached substitute amendments would better contribute to achieving that end than would Senator McCain's amendments.

The replacement of the current Commission with a single Commissioner and the conversion of the Commission's staff to career status will not in any way expedite completion of the relocation effort. Those changes, as well as the requirement to prepare and submit another report and plan, we believe, will in fact delay completion of the relocation.

We recommend that the Committee adopt the attached amendments as a substitute for the text of S. 1236.

EXPLANATION OF ATTACHED AMENDMENTS

Section 1 Housing and Bonus Payments

Section 1 of the attached amendment increases two appropriation authorizations in P.L. 93-531.

The first increase is in the amount of appropriations authorized for incentive payments. Section 14(b) of P.L. 93-531 mandates incentive payments for individuals who voluntarily applied for relocation within certain time periods. To date, the Commission has paid approximately $6,250,000 in incentive payments to 1,250 heads-of-households who have been relocated. The Commission has some 1,375 additional heads-of-household to be relocated who are eligible for incentive payments. The discharge of this obligation to those people will require approximately $6.6 million more in appropriations for incentive payments. We are therefore proposing that the total authorization, for this funding category, be increased to $13 million ($5.3 million above existing authority) in order to provide sufficient funds to complete this aspect of the program.

The second increase is in the amount of appropriations authorized for relocation housing, moving expenses, and payment for any habitation and other improvements left on the Hopi Partitioned Land (HPL) to which the relocatees are entitled under section 15 of P.L. 93-531. P.L. 93-531 as amended by P.L. 98-49 authorized appropriations of up to $15 million annually from Fiscal Year 1983 through 1987 to carry out section 15. The proposed bill would provide an aggregate appropriation authorization of $80,000,000 in fiscal year 1988 and subsequent years which represents the approximate costs of the completion of the Relocation Program.

The proposed authorization for housing represents the Administration's acknowledgment that resources should be made available to complete the program. The $80,000,000 amount proposed will be adequate for this purpose. By authorizing the total amount, without reference to a specific timeframe it will be possible for the Administration and the Congress to review on an annual basis the need for appropriations for replacement housing in accordance with competing priorities.

Section 2 Discretionary Fund

We are also proposing in the attached amendments a change in the existing Discretionary Fund Program which was added as section 27 of P.L. 93-531 by Congress in 1980. Under our proposed amendment those activities which are in support of the Commission's direct programmatic responsibilities would be funded in total by the Commission, rather than cost shared with other entities. This change will allow the Commission to meet the needs of the relocatees in a more direct manner and significantly improve the ability of the Commission to meet its responsibilities under the Act. There would be no change in the current authorization for a 30 percent match by the Commission of amounts provided by a Federal, State, local, or tribal government, tribal chapter, or private organization if providing those amounts would significantly assist either tribe in meeting the burdens imposed by P.L. 93-531.

Section 3 Expedited Judicial Process

Section 3 of the attached amendments relates to the dispute between the Hopi and Navajo Tribes of land in the so called 1934 area which was not settled by the partition of the 1882 joint use area.

Section 8 of P.L. 93-531 as enacted on December 22, 1974 requires a judicial resolution of the 1934 area dispute. Section 3(a) of the attached amendments preserves the judicial resolution but accelerates and expedites judicial resolution of the issue. However, the respective rights of the tribes in the 1934 area have not yet been determined. These amendments to section 8 allow the opportunity to appeal to the U.S. Supreme Court to expedite a judicial decision and do so without affecting the substantive rights of the tribes. The amendment would apply to all litigation under the act and not just that involving the 1934 area.

The amendments in section 3(b) of the attached amendments delete language in P.L. 93-531 that authorizes relocation of households from the 1934 area if the final judicial determination indicates that they are living in an area owned by the tribe of which they are not members. If the litigation results

in a partitioning of the 1934 area we do not believe that a Federally required or funded relocation of households should be imposed without further consideration by the Congress and the Administration.

The amendment in section 3(c) of the attached amendments would grant the Secretary of the Interior authority to permit necessary development in the so called Bennett-freeze area after offering the tribes an opportunity to approve or otherwise comment on the proposed development. To avoid further litigation, the Secretary's decision would not be reviewable.

Section 4 Lump Sum Cash Payment

Each head-of-household whose household is required to relocate who has not received benefits may elect to receive a one time cash payment in lieu of all other relocation housing, moving and other benefits under P.L. 93-531. Eligible heads-of-household who elect this option must provide proof satisfactory to the Commission that they currently occupy decent, safe, and sanitary dwellings as defined by the Commission. The cash payment shall be determined by adding the amount of the household's bonus payment, if eligible, plus $40,000, but may not exceed the cost of the benefits which the household would otherwise be entitled to under section 14 or 15 of P.L. 93-531 for any bonus payment due them, moving expenses due them, the purchase of any improvements they may have had on the Hopi Partitioned Land, and the amount in addition to that purchase price that "equals the reasonable cost of a decent, safe, and sanitary replacement dwelling adequate to accommodate such household".

Section 5 Redevelopment Fund and use of income from land reserved for benefit of relocatees

Section 5 would establish a new fund, to be known as the Redevelopment Fund, which would be used to finance infastructure, community and economic development, and social services for the benefit of Navajo relocatees moving to the New Lands. Previously these activities have been financed by the Bureau of Indian Affairs, the Commission's Discretionary Fund, and other Federal agencies, or not at all.

In the short term the Redevelopment Fund would be funded by direct appropriation (we propose a $10 million per year authorization for fiscal years 1989 through 1992). However, the amendment proposed in section 5(c) provides that amounts expended from appropriations to the Fund would be repaid (with interest) to the Treasury from future income generated by the land subject to section 11(h) of P.L. 93-531. Any future income not needed for reimbursement to the Treasury would be deposited into the Redevelopment Fund to be spent for the same purposes as authorized for funds appropriated to the Fund.

Our intent in these provisions is to preserve the policy in section 11(h) of P.L. 93-531 that the lands involved be used solely for the benefit of relocatees. At the same time, use of the fund mechanism will permit the relocatees to begin receiving benefits as they are needed, rather than waiting for income from the land to start flowing. (We understand that coal revenues from the Paragon Ranch portion of the land are not likely to be available before 1992.) At the same time, the loan mechanism will lift the

burden from taxpayers to provide these benefits and services, which are over and above the basic housing, bonus, and other benefits guaranteed by the P.L. 93-531 and which were not anticipated at the time of its enactment. We believe that it is highly appropriate that the income from this land, which would not have been conveyed to the Navajo Tribe but for relocation, should be used to support the development of land for the Navajo relocatees.

Loans from the Fund would be under terms and conditions consistent with the Federal credit policy as promulgated in OMB Circular No. A-70.

Section 6 Termination of Federal support for litigation

This provision gives notice to both tribes that the Government's subsidy of the ongoing litigation will cease at the end of FY 1989. This will allow the tribes a reasonable amount of time to prepare for and transition toward the assumption of the costs of the pending litigation.

Section 7 Assuring tribal payment of required rents

This provision guarantees that any required lease fees will be paid by the Secretary from the trust funds of the owing tribe in the event the tribe fails or refuses to pay.

Section 8 Clarifying United States involvement in litigation

In its present form, paragraph (3) of section 18(a) of P.L. 93-531 (25 U.S.C. 640d-17(a)(3)) authorizes the two tribes to sue each other for adjudication of claims arising from the partition of the Joint Use Area. It also allows the United States to be named as a party to these tribal actions. The tribes have attempted to use this provision as a waiver of the United States' sovereign immunity to file damage claims against the United States. Our proposed amendment makes it clear that the United States was authorized to be named a party only in order to facilitate the payment of judgments out of each tribe's trust accounts, and because the United States is the owner, as trustee for the tribes, of the legal title to the land involved. However, the amendment does ensure that claims brought under section 6(d) of the act (25 U.S.C. 640d-5(d)) are preserved.

In its present form section 6(d) requires that the lands partitioned to the tribes be of equal value and, if they are not, that the United States must pay the difference in value to the affected tribe, if the United States can be proved to have failed to prevent the degradation of the land. One of the essential elements in determining this value is determining the value of grazing "in its fully restored state". This phrase is not defined in the act. The tribes argue that the phrase means virgin grazing land. Because the tribes did not acquire vested rights in the property until 1958, section 8(b) of our proposed amendment defines "restored state" by using 1958 as the date for determining range condition.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

AMENDMENTS TO S. 1236 PROPOSED BY THE DEPARTMENT OF THE INTERIOR AND THE NAVAJO-HOPI RELOCATION COMMISSION

Strike out all after the enacting clause and insert in lieu thereof the following:

SEC. 1. Appropriation authorizations.

(a) Section 25(a)(4) of Public Law 93-531 (25 U.S.C. 640d-24(a)(4)) is amended by deleting "$7,700,000" and insert in lieu thereof "$13,000,000".

(b) Section 25(a)(8) of Public Law 93-531 (25 U.S.C. 640d-24(a)(8)) is amended by adding the following new sentence at the end thereof:

"There is hereby authorized to be appropriated in fiscal year 1988 and subsequent fiscal years an aggregate of $80,000,000 to complete the carrying out of section 15 of this Act."

SEC. 2. Discretionary fund authorization amendments.

Subsection (b) of section 27 of Public Law 93-531 (25 U.S.C. 640d-25(b)) is amended as follows:

(1) In subparagraph (1) delete "assist the Commission in carrying out its responsibilities or";

(2) by deleting the period at the end of subparagraph (2) and inserting in lieu thereof "; and"; and

(3) by adding immediately after subparagraph (2) the following new subparagraph (3):

"(3) engage or participate, either directly or under a contract or other agreement, in projects or activities that would significantly assist the Commission in carrying out its responsibilities under this Act."

SEC. 3. Expediting resolution of the 1934 area dispute.

(a) Section 8 of Public Law 93-531 (25 U.S.C. 640d-7) is further amended by adding the following new subsections at the end thereof:

"(f) Any district court decision rendered under this section shall be reviewable only by the Supreme Court pursuant to 28 U.S.C. 1254(1). The appeal must be taken by a notice of appeal filed within 10 days after the order is entered and the jurisdictional statement must be filed within 30 days after the order is entered. Any appeal pending upon enactment of this subsection which has not been heard by the United States Court of Appeals shall be dismissed and such action may be submitted to the Supreme Court of the United States as set out above.

"(g) It shall be the duty of a court to advance on the docket and to expedite to the greatest extent possible the

disposition of an action or appeal pending before it under this section."

(b) The first sentence of subsection (a) of section 14 of Public Law 93-531 (25 U.S.C. 640d-13(a)) is amended by deleting the words "section 8 and" both times they appear.

(c) The first sentence of subsection (f) of section 10 of Public Law 93-531 as added by Public Law 96-305 (25 U.S.C. 640d-9(f)) is amended to read as follows:

"Except for the limited areas around the village of Moenkopi and around Tuba City, the development of land which is the subject of an action under section 8 of this Act may be carried out if determined by the Secretary as necessary for the health, safety, or general welfare of either tribe or a member thereof after offering the tribes an opportunity to comment within 30 days of receipt of a written notice from the Secretary of the proposed development. The Secretary's decision shall be final and not reviewable."

SEC. 4. Optional method for relocatees to receive entitlement.

Section 15 of Public Law 93-531 (25 U.S.C. 640d-14) is amended by adding the following new subsections at the end thereof:

"(g) The head of a household entitled to benefits under section 14 of this Act and other subsections of this section under a contract with the Commission may elect (before receipt of those benefits) a single cash payment under this subsection in lieu of any other benefits under those

provisions if when the head of household so elects the household is occupying a decent, safe, and sanitary dwelling as defined or determined by the Commission. The cash payment shall be the lesser of (1) $40,000 plus an amount equal to the amount due the head of the household under subsection (b)(1), (2), (3), and (4) of section 14 of this Act, or (2) an amount equal to the total of the amounts to which the head of the household is entitled to receive under section 14 and subsections (a), (b)(2), and (d) of this section, as determined by the Commission.

"(h) The unobligated balance as of January 31, 1989 of amounts appropriated to the Secretary for the provision of housing and related facilities and other expenses in connection with relocation of households under this Act shall be available for obligation by the Commission under this section until expended and shall be in addition to amounts appropriated under section 25 of this Act."

SEC. 5. Redevelopment Fund and use of income from land reserved for benefit of relocatees.

(a) Public Law 93-531 is amended by adding the following new section 31 at the end thereof:

"Sec. 30. Redevelopment Fund.

"(a) There is hereby established in the United States Treasury a fund to be known as the Redevelopment Fund. That fund will be administered by the Commission until the effective date of the President's determination under

section 12(j) of this act after which the Fund shall be administered by the Secretary of the Interior. Under such rules and regulations as the Commission (or the Secretary of the Interior) may prescribe, funds appropriated to or deposited in the Fund may be used only for the benefit of the Navajo households described in section 11(h) of this act for purposes which will contribute to the continuing redevelopment and improvement of the economic, educational, and social conditions of those households including (1) construction, operation, and maintenance of community service facilities and infrastructure (e.g., schools, clinics, law enforcement facilities, roads, water and sewer connections, electrical connections, etc.), (2) loans, grants, and technical assistance to promote economic self-sufficiency, and (3) social services, including counseling, to minimize adverse social and psychological impacts of relocation.

"(b) The Commission (or the Secretary of the Interior) may request the Secretary of the Treasury to invest excess monies in the Fund in public debt securities of the United States with maturities suitable to the needs of the Fund, as determined by the Commission (or the Secretary of the Interior), and bearing interest at rates determined by the Secretary of the Treasury taking into consideration current market yields on outstanding marketable obligations of the United States with comparable maturities.

"(c) Loans made for economic self-sufficiency purposes from the Fund established under this section will be on such

terms and conditions as the Commission (or the Secretary of the Interior) may prescribe, except that:

(1) A loan may be made only when necessary to alleviate a credit market imperfection or to achieve specific Federal objectives by providing a financial subsidy, when a financial subsidy is the most efficient way to meet those objectives on a borrower-by-borrower basis.

(2) A loan will provide for complete amortization within a period of not to exceed 20 years, or 75% of the useful life of the physical asset to be financed by the loan, which ever is less as determined by the Commission (or the Secretary of the Interior).

(3) The amount of a loan may not exceed 100% of cost of the activity to be financed.

(4) A loan may not be subordinated to any other debt contracted by the borrower or to any other claims against the borrower.

(5) A loan will bear an interest rate that is set by reference to the average market yield to maturity (or interest rate) of a benchmark financial instrument. The benchmark financial instrument will be chosen through reference to the financing costs that unassisted borrowers of credit worthiness similar to typical borrowers in the program would incur in borrowing funds for similar purposes and under similar conditions. The minimum interest rate of those loans will be at the yield

(or interest rate) of the benchmark financial instrument. The interest rate of new loans will be adjusted at least every 12 months to take account of changes in the interest rate of the benchmark financial instrument.

(6) The Commission (or the Secretary of the Interior) will provide explicit standards for use in periodically assessing the credit risk of new and existing loans and must find that there is a reasonable assurance of repayment before making a loan.

(7) Within the resources and authority available, the gross obligations for the principal amount of loans will not exceed the amount specified in appropriations acts.

"(d) Notwithstanding any other law relating to the acquisition, handling, or disposal of property by the United States, the Commission (or the Secretary of the Interior) may complete, recondition, reconstruct, renovate, repair, maintain, operate, or sell any property acquired by the Commission (or the Secretary) under this section."

(b) Section 25 of Public Law 93-531 (25 U.S.C. 640d-24 is amended by adding the following new paragraph at the end thereof:

"(9) There is authorized to be appropriated for the Redevelopment Fund created by section 31 of this act not to exceed $10,000,000 in each of fiscal years 1989, 1990, 1991, and 1992."

(c) Subsection (h) of section 11 of Public Law 93-531 (25 U.S.C. 640d-10(h)) is amended by adding the following sentences at the end thereof:

"The income from the land shall be deposited in the Redevelopment Fund under section 31 of this act and shall be used to reimburse the General Fund of the United States Treasury for amounts appropriated to the Fund, plus interest. Interest shall accrue on the amount of unreimbursed appropriations utilized by the Fund at a rate to be determined by the Secretary of the Treasury (to be redetermined annually) taking into consideration the average market yields on outstanding marketable obligations of the United States with approximately one year remaining to maturity. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest. Amounts not needed to make such reimbursements shall remain available until expended, for use as provided in section 31 of this act."

SEC. 6. Termination of support for litigation.

(a) Subsection (e) of section 8 of Public Law 93-531 (25 U.S.C. 640d-7(e)) is amended by (1) deleting "The Secretary of the Interior is authorized to" and inserting in lieu thereof "Until September 30, 1989, the Secretary may" and (2) by adding the following sentence at the end thereof:

"The number of hours and hourly rates charged and other charges may not exceed amounts which the Secretary determines are clearly justified and reasonable.".

(b) Subsection (a) of section 29 of Public Law 93-531 as added by Public Law 96-305 (25 U.S.C. 640d-27(a)) is amended by inserting immediately before the period at the end thereof the following: "but not later than fiscal year 1989. The number of hours and hourly rates charged and other charges may not exceed amounts which the Secretary determines are clearly justified and reasonable".

SEC. 7. Assuring tribal payment of required rents.

Section 16 of Public Law 93-531 (25 U.S.C. 640d-15) is amended by adding the following new subsections at the end thereof:

"(c) Any district court decision rendered under this section shall be reviewable only by the Supreme Court pursuant to 28 U.S.C. 1254(1). The appeal must be taken by notice of appeal filed within 10 days after the order is entered and the jurisdictional statement must be filed within 30 days after the order is entered. Any appeal pending upon enactment of this subsection which has not been heard by the United States Court of Appeals shall be dismissed and such action may be submitted to the Supreme Court of the United States as set out above."

"(d) If a tribe has failed to make rent payments required under this section, the Secretary may make the payments on

behalf of that tribe from any funds now or hereafter held in trust by the Secretary for that tribe."

"(e) A tribe may not make a payment under this section with funds appropriated by the Congress and provided to the tribe under a contract or agreement."

SEC. 8. Clarifying United States involvement in litigation.

(a) The proviso in paragraph (3) of section 18(a) of Public Law 93-531 (25 U.S.C. 640d-17(a)(3)) is amended to read as follows:

"Provided, That the United States may, for the purpose of making disbursements of trust funds of a tribe to satisfy judgments in favor of the other tribe as a result of an action filed under this subsection, be joined as a party to such an action and, in such case, sections 1346(a)(2) and 1505 of title 28, United States Code shall not apply to the action: Provided further, that no claim against the United States for damages arises under this subsection, or under any other provision of this act, except that the United States may be liable under section 6(d) of this act for not more than the difference one tribe is found to owe the other tribe in the owelty proceedings presently pending in Sidney v. MacDonald, Civ. No. 58-579 Pct. - Ehc (D. Ariz.)."

(b) The second proviso in section 6(d) of Public Law 95-531 (25 U.S.C. 640d-5(d)) is amended by deleting the words "in a fully restored state", and inserting in lieu thereof "if restored to the condition of the land as it existed on July 12, 1958".

Hopi Proposed Schedule for Expedited Final Resolution of Pending Motions

On March 21, 1988, Judge Carroll held a status hearing in each of the pending cases among the Hopi Tribe, the Navajo Nation, and the United States. At that hearing, the Hopi Tribe presented its schedule for resolution of the litigations, which would set early trial dates, withdraw several pending motions for summary judgment, and seek to resolve differences out of court where possible. We anticipate that Judge Carroll soon will set pre-trial schedules and trial dates in many of the matters. The Hopi schedule is as follows:

1. Hopi Tribe v. Navajo Tribe, Civ. Nos. Civ. Nos. 85-801, and MacDonald v. Hodel, 87-1966: The HPL Rental Cases

   The Hopi Tribe seeks final resolution of the Navajo-initiated judicial review of the Secretary's 1978-1984 grazing and homesite rental determinations in the summer of 1988.

2. Hopi Tribe v. Hodel, Civ. No. 82-272: The Grazing Control Case

   The Hopi Tribe is working closely with the Bureau of Indian Affairs to develop a Hopi grazing ordinance for the Hopi Reservation and expects to seek dismissal without prejudice of Civ. No. 82-272.

3. Sidney v. MacDonald, Civ. No. 74-842: The 1934 Act Case

The Hopi Tribe requested expedited decision of this case, suggested that trial proceed while reserving decision on the question of the Paiutes' status until later, and requested a March 1989 trial date.

4. Sidney v. MacDonald, Civ. No. 76-935: The JUA Accounting Case

The Hopi Tribe seeks a trial in March 1989.

5. Sidney v. Navajo Tribe, Civ. No. 76-936: The JUA Use Case

The Hopi Tribe has requested an expedited ruling on its pending motion for partial summary judgment and that trial be set for May 1989.

6. Sidney v. Navajo Tribe, Civ. No. 76-934: The JUA Damage Case

The Hopi Tribe has offered to withdraw its pending motion for partial summary judgment (except as to the question of pre-1958 damages) and has requested that trial be scheduled for late 1989 or early 1990.

7. Sidney v. MacDonald, Civ. No. 58-579: The Equalization Case

The Hopi Tribe has offered to withdraw its pending motion for partial summary judgment and that trial be scheduled for late 1989 or early 1990.

8. Navajo Nation v. Hodel, Civ. No. 86-912, Benally v. Hodel, Civ. No. 86-873, and Manybeads v. United States, Civ. No. 88-410: The Navajo Relocation Challenges

Counsel for the Navajo Nation has indicated that he is considering dismissing Navajo Nation v. Hodel. The United States has asked that the court dismiss Benally v. Hodel and Manybeads v. United States.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

IVAN SIDNEY, et al.,	)	
	)	CIV 58-579 PHX EHC
Plaintiffs,	)	CIV 76-934 PHX EHC
	)	CIV 76-935 PHX EHC
vs.	)	CIV 76-936 PHX EHC
	)	CIV 81-272 PHX EHC
PETER MacDONALD, et al.,	)	CIV 85-801 PHX EHC
	)	CIV 86-912 PHX EHC
Defendant.	)	CIV 86-973 PHX EHC
	)	CIV 87-1966 PHX EHC

STATUS HEARINGS

B e f o r e: THE HONORABLE EARL H. CARROLL, JUDGE

Phoenix, Arizona
March 21, 1988

Appearances:

For the Plaintiffs:	JAMES SCARBORO DAVID WARREN HARRIS SHERMAN PETER OSETEK Attorneys at Law
For the Defendants:	JUDITH BARTNOFF BRUDE GREEN ERIC DAHLSTROM Attorneys at Law
For the United States:	STEVEN CARROLL DANIEL JACKSON Attorneys at Law

Phoenix, Arizona
March 21, 1988

PROCEEDINGS

THE CLERK: Civil 58-579, 76-934, 76-935, 76-936, 81-272, 85-801, 86-912, 86-973 and 87-1966, Ivan Sidney, et al., versus Peter MacDonald, et. al., on for status hearing.

MR. SHERMAN: Your Honor, my name is Harris Sherman, I am here for the Hopi Tribe on each of the cases that have been identified.

THE COURT: Thank you.

MS. BARTNOFF: Your Honor, my name is Judith Bartnoff and I am here for the Navajo Tribe on some of the cases that have been identified.

THE COURT: Your last name? I didn't catch it.

MS. BARTNOFF: Bartnoff. I am with Patton, Boggs and Blow in Washington, D.C.

I am here on 58-579, on 76-934 --

THE COURT: Pardon me? Start again now?

MS. BARTNOFF: I am here on 58-579, on 76-934, 76-935, 76-936, 85-801 and 87-1966.

THE COURT: All right, thank you.

Do we have anyone else then for -- if there are any other cases, that are here for the Navajos?

MR. CARROLL: May it please the Court, Steven

Carroll for the federal defendants, Your Honor.

We are parties to all the cases, except 935 and 936.

MR. GREEN: Morning, Your Honor, Bruce Green for the Navajo Nation, I am here on behalf of the tribe for 973 -- 86-973.

THE COURT: I didn't hear you now.

MR. GREEN: Excuse me. 86-973, Navajo Nation v. Hodel.

MR. OSETEK: Morning, Your Honor, Peter Osetek here on behalf of plaintiff, June Benally in 86-912.

MR. DAHLSTROM: Your Honor, Eric Dahlstrom, Deputy Attorney General for the Navajo Nation, I believe the last remaining case on the Navajo Tribe appearing in 81-272.

THE COURT: Well, it's interesting to see the new lawyers that are involved. The case has survived a number of judges and it's now survived a number of lawyers, so hopefully within this present group why we will be able to do something.

I had had a schedule prepared -- Chris Meyer is here on my left, he is a law clerk for me. I received permission from the Ninth Circuit to hire a law clerk just to work on the Indian cases and he's been doing that now for several months, reviewing the files and giving me a report on the status of the different proceedings and where they are and a little summary about each one of the cases to bring me up to

date. And he will continue to do that for several more months, so that's been very helpful to me and is one of the reasons why I was really able, at least, to get the summary prepared as to where we are on various issues.

And as you all are aware of where I am, with, of course, a great many matters under advisement. I have said it before, I know, and I suppose it bears repeating that in a way, it's not to have approached some of these problems or attempt to resolve them on an ad hoc basis, I think, has at least preserved some general orderliness between the Tribes and there have been changes in leadership, of course, in the Tribes, at least twice or one and a half times, however you perceive it, since I have been handling them.

We went through Mr. Zah's four year term as a Tribal Chairman. I started with Mr. MacDonald, I think and he is now back and, of course, Mr. Sekaquaptewa, but -- and I was also always in the back of my mind at least keeping -- giving attention to what was scheduled to be the termination of the relocation process.

And, it certainly is obvious now that that relocation process doesn't -- it seemingly does not have a termination date or a specific date at which we can work against.

I had asked -- going back to the law clerk issue before, I had asked at an earlier time to get a law clerk

specifically to assist me and that was at the outset of the Gramm Rudman problems and while the circuit approved it, it was turned down by the administrative office and that rather delayed it.

I think also, in reviewing the motions and some of the motions that I have under advisement with respect to what are some of the issues, how do you -- how are different claims going to be evaluated in the sense of what did Congress mean by a particular act or a particular section in an act versus another section.

I think by and large, to expect some kind of a declaratory judgment from me regarding many of those issues isn't going to be realistic. And I think it isn't realistic looking at it from your position as the lawyers in the case.

First off, I suppose it would be nothing more than advisory in a practical sense, because even if I made certain rulings I would think that each of you principally -- certainly the Navajos and the Hopis are going to have to prepare, however you think the claim should be resolved, because if I rule a certain way through offers of proof, I would think each of you are going to have to do essentially the same things that you would be doing anyway.

So I think in a very broad sense you are going to have to make some of your own judgments and whether the evidence is admitted or admitted under an offer of proof

really isn't going to make a lot of difference in the final analysis, because whatever that evidence is, if you don't make an offer of proof it's gone.

If you do make an offer of proof then myself or whoever does hear the case finally is presumed to have considered it, if it was relevant, or not if it wasn't, and all that flows from that.

So I think you are simply going to have to be prepared to address some of those claims yourself.

I think the Government has a problem in, at least as between the so-called damage claims and the Owlty claims as to whether there is something different between them and where the Government's obligations may rest.

I would be interested first from the Hopis, because seems to me, based upon the cases that have been filed and the issues that are involved, that the Hopis have been the party most interested in having these cases come on for resolution, when it would be expected that the -- from the Hopis' perspective, at least, that these different claims having to do with the valuation of the land or however you define the other damage claim or the other claims for money, when they would be ready to proceed to trial on those.

Mr. Scarboro -- or Mr. Sherman? Pardon me.

MR. SHERMAN: Thank you, Your Honor.

Let me first say preliminarily that the Hopi

Tribe is very anxious to move these cases along and we do appreciate this status conference.

As you have noted there are new faces here and hopefully those new faces will bring fresh ideas and fresh approaches, which can break many of the log jams that currently exist.

I should report to the Court that recently we have had discussions with counsel for the Navajo Nation, the United States, and I think that we are on our way to making some progress to eliminate some of these log jams.

Perhaps the best way, Your Honor, I could address the question you have asked is to go through each of the cases where the Hopis are a party and tell you what some of our approaches would be and perhaps it would be appropriate to allow counsel for the Navajos and the United States at that time to respond to whether or not we could make new approaches, new efforts on each of these matters.

The first case, Your Honor, that I have on my list is 58-579, which is the equallization or Owlty case.

Consistent with what the Court has just said, it is the Hopi Tribe's inclination for the moment to consider withdrawing our motion for partial summary judgment, which I believe is the only motion that is currently pending in that case.

THE COURT: Let me just check my -- I think there

are -- that is probably right. That hasn't been ruled upon certainly.

MR. SHERMAN: It was our feeling, Your Honor, that if it would be withdrawn without prejudice, we would then proceed to aggressively develop the evidentiary base, which in turn will help put these legal questions in a more realistic context.

We have not yet discussed this with the Tribal Council, we need to do so first, but I believe we could report back to this Court and to the other parties within the next 30 days as to whether we would withdraw the motion without prejudice.

Secondly, in this case, Your Honor, it is our hope that with respect to discovery, that the various expert witnesses for the Hopis and the Navajo Tribe and perhaps the United States could work together under a common format to develop the evidentiary issues.

We have appraisers, the Navajos have appraisers, it is our hope that these appraisers could in fact work together to go out onto the HPL and the MPL and develop basically a collective data base, which would be helpful for this Court and I believe in turn would save both Tribes considerable time and effort and money.

So we are hopeful that we can sit down with counsel for the Navajo Tribe and work out such an approach and

we are hopeful that the United States would join us.

My own personal feeling is, Your Honor, that there is no reason why this case cannot be ready for trial by the fall of 1989 or early 1990.

The Hopi Tribe would appreciate the Court setting a trial date for this matter. I think it will keep the parties' feet to the fire. I think it will ensure that we will make good progress on bringing this case to an early resolution.

Perhaps counsel for the Navajos or the United States would like to respond,

MS. BARTNOFF: Your Honor, let me add one point.

As you may suspect from what you are going to be hearing this morning there was a conference call late last week with myself, Mr. Sherman, other lawyers at Arnold and Porter, Mr. Jackson, Mr. Carroll and Mr. Nordwall (phonetic) and among us we hoped to have a few things to report to you in terms of agreements we have made that we hope will make things go smoothly.

We certainly have no objection to the Hopis' withdrawal of their motion for partial summary judgment. We think that is a good idea.

And we agree generally with the proposition that the factual basis in this -- the facts have to be developed in this case and that it is appropriate for these legal issues to

be resolved in the context of the facts.

However, Your Honor, there was one factual sort of quasi-factual, quasi-legal matter that we, coming into the case, believed was really essential to have resolved before the experts could really get going.

And that is the equivalent of a decision about the shape of the table before we go any further and that is what is the date of partition?

And in the conference call, the Navajo Tribe proposed to the others that we reassess our positions and we were prepared to go with the April 1979 date, which as we understood it, was the date that both the federal defendants and the Hopi Tribe had stated in their papers to the Court, in the context of a variety of the pending motions primarily in 85-801, Your Honor, but this also applies to the Owlty proceeding, was the appropriate date.

The Federal Government had stated that although, and I think Mr. Carroll can obviously speak to this, although for some other purposes they were using the August 1st 1978 date, but I believe the parties are now in agreement with the use of the 1979 date for all purposes.

And to the extent that the Navajo Tribe may have argued differently in the context of various motions, Your Honor, we are prepared to revisit that issue and that is the one matter that we think is a kind of a predicate that would

be helpful to everybody.

THE COURT: So you say the Navajos do agree that the appropriate date of partition would be April 18th, 1979?

MS. BARTNOFF: That's correct. And it is my understanding -- the others can speak to it, of course, but it is my understanding that everyone else is willing to agree with that as well, so that at least we can now be moving forward on a common basis.

In that connection we very much welcome the Hopi Tribe's proposal for the experts to work together at least with regard to a common format.

Your Honor, I can't promise, at least in advance of further consultation with the experts and with the experts consultation with one another, that we can agree on stipulated facts in this case.

But obviously, to the extent that we are in a position to agree on certain, at least baselines for what we are doing and the nature of the enterprise, we would very much appreciate the opportunity to work with the Hopi Tribe's experts.

Our experts, I will tell you, I think it is not divulging anything, proposed to us that we propose something very similar. They proposed it first to us last Friday. And it was my view that resolving the date of partition was the first step toward resolving more of those things, but it is

certainly an idea that we welcome.

It will probably take a little time for us to see whether that approach can work or to what extent that approach can work, but I believe it will be time well spent.

In terms of the total amount of time that this will take, I think that the dates that the Hopi Tribe has mentioned this morning are not unrealistic.

A lot of that will depend on the experts and the extent to which we can agree on baseline data, but I think we are talking about something that could -- about a trial date that at the earliest would be in the fall of 1989.

THE COURT: All right. Thank you.

MR. CARROLL: May it please the Court, Steven Carroll for the federal defendants.

Your Honor, we did have a fruitful telephone conversation on Friday and in the spirit of cooperation, which has often been alluded to in this courtroom is now actually present and I am much encouraged by that.

The United States would agree that this matter could be tried in the fall of '89 and the spring of 1990.

As to the date of the partition, it is my recollection that we had agreed that for purposes of the appraisal, that the April 1979 date would be fine with us. It may be fine with us for all purposes, but it would take some checking that I was not able to do over the week-end to assure

that, but at least for the appraisals in this case, the April '79 date is acceptable. So that issue is taken care of.

We will obviously get to the 76-934 case later, but we have in the past briefed back and forth in those two cases trying to determine the liability of the United States. And it is our position that if we have any liability at all it is in 58-579, one of the Owlty provisions, and not in the damage case. And I'm sure I will have an opportunity to address that when that case is called.

And as to the appraisers working together, the United States does not have an expert on a retainer, but we do have a Bureau of Indian Affairs appraiser who we hope we could free up to work with the expert witnesses on format questions.

He is familiar with the problems, he has worked on the rental value determinations, so that we would be more than happy to cooperate with the Tribes on that question too, Your Honor.

THE COURT: All right. Thank you.

MR. SHERMAN: Your Honor, before I move on to the next case, I did want to mention that the Hopi Tribe obviously welcomes the stipulation concerning the April 1979 partition date.

I should mention though, Your Honor, that as part of that stipulation it is my understanding that no party would use this change in date to ask for various matters pending

before this Court being remanded back to the agency for further determinations.

For example, in 87-1966, which is the grazing rental determination from 1978 to 1984, I believe a 1978 partition date was used to calculate the rental determinations.

My understanding is that the Navajo Nation would not ask that the matter be now sent back to the Department of Interior for further evaluation. We assume --

THE COURT: What date was used? Pardon me.

MR. SHERMAN: I believe there is a 1978 partition date that was used by the Department of Interior for calculating these post-partition grazing rental payments.

And it is our understanding that if all the parties agree that the date ought now to be April 1979, this would not be reason for asking that the Court send it back to the agency for further review.

It is our understanding that the agency can clarify how the rental determinations would be modified with the new date and that information can be presented to the Court.

So I just want to make sure that -- I believe that was part of our understanding with the other parties.

MS. BARTNOFF: Your Honor, I certainly didn't mean to leave anything out.

In fact, I have agreed to draft a stipulation that would be circulated among the other parties and presented to you in that regard.

The specific answer to the question about the date may not matter, standing here I'm not sure whether the date that was used in the '78 to '84 grazing rental determination was January 1st of '78 or August 1st of '78. But, our thought is that that determination could be corrected as a factual matter, whatever the date was, to make it start in April of 1979.

We have agreed that that correction is simply almost a ministerial matter and that correction wouldn't require or remand and the invocation of new administrative appeal procedures.

Similarily, for your information, there is a determination that apparently was made final last Friday, though I haven't yet had a chance to review it, on the '78 to '84 homesite and farmsite rental determinations.

And the determination that was made last Friday was made using the August of 1978 date and we understand that it will take a couple of days for the new figures to be plugged in. But again we don't envision that -- that is still in effect it was just done by the Interior Department, so it shouldn't make any difference. But we have agreed to take a first cut at drafting the appropriate stipulation in that

regard.

THE COURT: Let me ask, just generally, whether the rental payments start at a particular date or not, if they start at a later date, then my understanding would be generally that whatever the fair -- or whatever that value would be, would somehow be included in the damage claim or some other claim and be a part of an earlier process. Isn't that generally what we are talking about?

MS. BARTNOFF: That's generally true, Your Honor.

There are two issues, I think. One is simply just clarifying what we are doing, so that we are not litigating over what the right date should be.

The other is that there may be some difference in terms of which uses are covered in one proceeding versus the uses that are covered in the other.

I don't think that -- I frankly don't know what the difference in money will be. My sense is it probably isn't going to make a lot of difference, but it certainly does make things easier.

In terms of the Owlty proceeding, however, for purposes of determining the value, the relative values of the two parcels on the date of partition, it did make sense to us that we all start with a common understanding of what that date was, whether it was 1977, 1978 or 1979.

And it does make a difference there, for purposes

of simply common agreement about the baseline for the evaluation.

THE COURT: Well, I don't disagree with that. And I also agree with your comment that you are drafting a memorandum or agreement or stipulation that would address these issues, because I think all too frequently those things aren't reduced to writing and that just generates another dispute down the road, either when someone forgets or whatever. So I certainly encourage you to do that.

MS. BARTNOFF: Your Honor, I promise I won't forget, but I also am quite confident that my colleagues wouldn't allow me to forget even if I had any inclination to do so.

THE COURT: I'm sure you wouldn't.

MR. SHERMAN: Your Honor, there is one other matter with respect to case 579 that we would like to bring to the Court's attention. As you know 579 constitutes the supplemental proceedings under Healing.

And within this framework in the recent past it has come to the attention of the Hopi Tribe that there are many new and what we believe to be unauthorized Navajo structures that have been built on the HPL.

And the Hopi Tribe believes that these structures may violate the Court's previous injunctions. The Hopi Tribe has met with representatives of the Navajo Tribe and the

United States to resolve this issue.

The Hopi Tribe has recently sent a proposal to the Navajo Tribe, which we believe would resolve these matters outside of the Court. But I simply want to bring to your attention that if we are unsuccessful in this effort, we will be back before this Court with a motion for contempt.

We hope this will not be necessary, but we think you ought to be advised of that possibility.

THE COURT: All right. Thank you. Those issues always seem to come up in the spring. At least, it is my recollection that that is when I heard it one earlier time.

MR. SHERMAN: Moving on, Your Honor, the next case that I would like to address is 76-934, which we refer to as the Joint Use Area damage case.

It is my understanding that there are three motions that are currently pending, one is a Hopi motion for partial --

THE COURT: What number did you have?

MR. SHERMAN: I'm sorry. It is 76-934.

THE COURT: All right. Thank you.

MR. SHERMAN: The three motions consist of a Hopi motion for partial summary judgment. Secondly, I believe there is a United States motion for summary judgment. And lastly, there is a United States motion to dismiss, which relates to a Navajo claim for indemnification.

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With respect to the Hopi motion, Your Honor, this like the other one that I just referred to in the 579 case is a motion for partial summary judgment.

As in the 579 case, we are considering withdrawing the motion without prejudice. Here too, we need to discuss this matter with our clients, but it is our general feeling that it would perhaps be better to build a factual framework first before presenting the Court with these legal issues.

There is one exception, Your Honor, to this matter, which I would like to bring to the Court's attention and that is that the Hopi Tribe would like guidance from the Court as to whether it can look to pre-1958 damages.

This issue has been raised in the Government's motion for summary judgment, but the Court may not need to decide that issue and hence the Hopis would like to raise it as a discrete and limited motion.

I discussed this on the phone with counsel for the Navajos and the United States on Friday and I believe that they do not have objection to that. And if there were no objection, we would like to file such a motion within the next 30 to 45 days and then get the matter on a briefing schedule as soon as possible.

As a general matter concerning the discovery issues in this case, Your Honor, I think once this 1958 issue

were resolved, we could work out a discovery schedule agressively with the other parties and as in the equalization case, we would hope that this matter could be ready for trial by late fall 1989 or the spring of 1990.

I know that the United States has a number of issues that they would like to raise with respect to the relationship of this case to the 579 case, so perhaps Steve Carroll would like to initially address those issues.

THE COURT: Well, one thing I noticed, of course, this case was filed prior to the partition judgments. And I take it, at least, relates to -- is limited to claims occurring before partition. Is that correct, Mr. Sherman?

MR. SHERMAN: Your Honor, I believe, as the case is presently structured it is -- it is principally for claims prior to partition, although conceivably it could also be asserted claims after partition.

There is another case pending before the Claims Court in Washington, D.C. on damage to land, which deals also with pre- and post-partition damage to land claims, but I think the principal -- the principal claims being addressed here are pre-partition issues.

THE COURT: And that authorization would have to be found in the Relocation Act?

MR. SHERMAN: Yes, Your Honor. The principal authorization would be in the 1974 Settlement Act. It is

conceivable that there is other authority for going back before 1958 and that is one of the issues we would like to bring to your attention.

The 1958 -- excuse me, the 1974 Settlement Act does not address whether or not the Hopi is entitled to go back prior to 1958 in its damage claims.

THE COURT: But then you get into one of the purposes of the '74 Relocation Act was to allow the Government to be sued, a waiver of immunity up to a certain extent, as well as the Navajos. Right?

MR. SHERMAN: That's correct.

THE COURT: And, why -- I, perhaps I knew it, I don't recall it at the moment, if I did. Why isn't the Court of Claims' case determinative of some of these issues then?

MR. SHERMAN: Your Honor, the Claims Court case might be determinative of some of these issues, particularly as relates to the United States.

You should be advised that we did move and agree to a stay in the Claims Court proceeding, pending the outcome of the 934 case.

THE COURT: Has there been a trial in the Court of Claims?

MR. SHERMAN: No, Your Honor, there has not.

THE COURT: They proceed by way of trial, do they not in the Court of Claims?

MR. SHERMAN: Yes, they do.

There have been limited arguments on various motions before the Claims Court, but in two of the three cases before the Claims Court dealing with damage to land and past rental payments, the Hopi Tribe has agreed to a stay of those proceedings until the 934 case and the 936 case can be decided, Your Honor.

THE COURT: When were those cases filed in the Court of Claims?

MR. SHERMAN: I believe 1984.

THE COURT: What limitation would be involved? Twelve year limitation?

MR. SCARBORO: Good question.

THE COURT: Pardon?

MR. SCARBORO: Good question.

THE COURT: That's the maximum period, isn't it?

MR. SHERMAN: Yes. It is a question that is a very complicated question, Your Honor, that has been argued in this case.

THE COURT: Have there been any orders issued by the Court of Claims?

MR. SHERMAN: There have not.

THE COURT: All right. Thank you.

MR. SHERMAN: Your Honor, there is a United States' motion to dismiss under consideration by that court

now, and has been argued by the parties.

THE COURT: I don't -- perhaps it was, has been raised, I don't recall any motions before me involving the Court of Claims case or the implications of it.

MR. SHERMAN: That's correct.

THE COURT: All right.

Mr. Carroll?

MR. CARROLL: Yes, Your Honor. As to the Court of Claims case, the United States has not agreed to a stay of those and has asked the court to rule on the motions to dismiss.

I personally am not handling those cases, but Mr. Jackson, who is with me today, was at that argument. He reports to me that that is the status of those cases.

Your Honor, the United States has two motions pending, for summary judgment and a motion to dismiss. And, unlike the other motions for partial summary judgment, I do not believe that these -- these motions are ripe and are proper under the rules. We are not simply asking the Court for declaratory judgment as -- as to give us legal guidance as to how to proceed in the case. And I would ask the Court to decide those motions.

THE COURT: Let me just ask, generally, assuming I decided them, would that -- then you would want to seek Rule 54(b) language, so that there could, in effect, be an appeal

on those while these other matters are pending?

MR. CARROLL: I can't give any assurances on that, Your Honor. The Solicitor General of the Department of Justice decides on appeals. So I can't say one way or the other what the United States might do. We could.

THE COURT: If I included Rule 54(b) language, his options would be somewhat limited. He'd have to appeal, if he wanted to pursue the matter. Right?

MR. CARROLL: Yes, Your Honor.

THE COURT: All right.

MR. CARROLL: Your Honor, the question of pre-1958 damages that the Hopi Tribe would like to see decided on its motion, I think it's subsumed in the motions of the United States, at least it should be presented in those motions.

As to the trial date, Mr. Sherman has proposed the same dates for this case as the other case and since I'm the only attorney for the United States, I don't see how that is possible. Excuse me.

MR. SHERMAN: Your Honor, we are not suggesting that Mr. Carroll need be at both places at the same time.

I do think that in the equalization case, 579, and in this case, relatively brief trials would be required.

I do not think that in either of these cases would there be a need to have a trial beyond one to two weeks.

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So hopefully, sometime during the fall of 1989 or the spring of 1990 both of these cases could be heard.

THE COURT: Well, if you say they could be heard in two weeks, then I guess I would draw a corollary rule from that, that it isn't going to take a year and a half to prepare for them either.

MR. SHERMAN: Your Honor, it is conceivable the discovery schedules could be moved up. These are largely document cases and there is considerable amount of discovery work that needs to be done prior to both of these trials.

MR. CARROLL: Your Honor, I have not -- frankly, I have not given much thought to the length of trial, but I believe that a one or two week projection on these cases is perhaps optimistic.

I mean we have got a very large area that has to be appraised, with various assumptions in the appraisals and perhaps -- well, it seems to me that the one or two week estimate of trial time might be optimistic.

THE COURT: Well, I will be thinking about that in the process as I say.

MS. BARTNOFF: Your Honor, if I might, in terms of the issue of pre-1958 damages, I believe that what I indicated to the parties in our call last week was that that was something that we would consider.

Our general view about that issue is that it is

not the same thing as the date of partition. And that it does not make sense to resolve these cases factually on a piecemeal basis.

It is an issue that we would want to address in briefing, but what I heard this morning is that the Hopi Tribe intends to file a motion and I gather that will give us the opportunity to do so. But it is something that we would want to address in the specific context of the Hopis' claim, if that is the way it is going to be presented.

In terms of the trial time, I am usually over optimistic about trial times and I think two weeks is too short for this case. I think that as the experts proceed we may have, you know, perhaps in a few months we will have a better estimate for you, but I simply, even standing here today, I really don't believe that that is realistic, given the nature of the area and the complicated nature of the issues as well as some of the technology that may be involved in making the determination.

THE COURT: Well, I don't think you put in the fourth element, assuming you had three. And that is really the attitude of the parties and particularly the Navajos, I think, to ever come to a resolution of that issue.

You are a stranger here to me, but not to these proceedings, I'm sure. And I have said it before and the cases speak of it repeatedly, that there has never been a

benefit to the Navajos to resolve these cases. That is true today. It will be true four years from now, et cetera.

So, I'm not damning you, I think you come with a very cooperative attitude. I don't think you probably come with a very cooperative client. And I just don't expect any long range cooperation to resolve the matters that we speak very comfortably here today of being able to do.

MS. BARTNOFF: Well, Your Honor, I think there are a couple of aspects to that and I'm the new kid on the block in the cases. The Navajo Tribe is the defendant in the cases, and I think that puts the Navajo Tribe in a somewhat different posture than the plaintiff is obviously in.

THE COURT: The Navajos are the payees or the Government is the payee -- or the payors, pardon me.

MS. BARTNOFF: That's right. And I think that there obviously are very long standing and heartfelt differences between the Tribes.

THE COURT: I don't think so --

MS. BARTNOFF: There is a difference.

THE COURT: -- truly. There may be a public perception of that, but I really don't think so.

I think there are just as many -- not just as many, but there are caring Hopis, there are caring Navajos, and I'm not going to get into -- I probably shouldn't have said it. But the Navajos are the dominant tribe in the sense

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of people, political pressure, hopes to get something through Congress, which has been successful.

So, that is the reason I say it. I'm not going to wave the flag for the Hopis or the Navajos, all I am saying is that when the time comes, it's going to be a slow process. I agree with you.

MS. BARTNOFF: Your Honor, I don't want -- I'm not sure I need to respond. I think the Hopis have done pretty well for themselves in Congress, as well.

What I can assure you of is that to the extent that there is -- you know, we can all be involved in hard fought litigation and that doesn't mean that counsel aren't cooperative on those matters where it simply makes sense for everybody, for counsel to be cooperative, and that is the way we intend to proceed.

THE COURT: I'm sure you intend to proceed that way and I'm sure you will within your capabilities and the fact that, to some extent, of course, goes back to the Tribe --

MS. BARTNOFF: That's right.

THE COURT: -- and what they intend to do.

And I think it is unfortunate, in a practical sense, that by and large the one who is paying the money through all this process is the United States, it's financing you.

MS. BARTNOFF: No, it is not.

THE COURT: Well, it is, because the money comes from the United States.

MS. BARTNOFF: No, it does not, Your Honor.

THE COURT: Either that or you found a secret well or something.

And it is financed through the Relocation Act and that all encourages those things. But in any event you are here and you are cooperative and I welcome you.

MS. BARTNOFF: Thank you, Your Honor.

Let me just make one other observation about 58-579 and the new construction question.

We very much agree with Hopi counsel, but we hope to be able to resolve that issue. I should tell you that we consider ourselves currently to be in the posture of settlement negotiations with the Hopi counsel and for that reason we have not filed any motions to modify the Court's orders either.

But if we reach an impasse and feel that motions are necessary, I simply want to alert the Court to the fact that they will be coming from both sides.

THE COURT: Well, I have had those before as well.

It really is pointless, as indicated before, to get into the kind of disputes and the kind of hearings we had

before and regardless of who paid the bill, it is expensive. Somebody came up with $500,000 I think last time over construction that probably didn't involve $20,000.

MR. SHERMAN: Your Honor, before I move on to 76-935, I also simply wanted to ask leave of the Court to file a supplemental brief in response to the Government's motion for summary judgment.

As new counsel for the Hopis there are some additional issues that we would like to address in response to the Government's motion. And we would be in a position to file that response within the next 45 days.

THE COURT: Would this be in 934, 935?

MR. SHERMAN: In 934, Your Honor.

THE COURT: Pardon?

MR. SHERMAN: In 934.

It would be in response to the Government's motion for summary judgment.

THE COURT: All right.

MS. BARTNOFF: Your Honor, I'm a little confused.

Is this in lieu of the Hopi Tribe's motion that was described this morning?

MR. SHERMAN: No, it is not.

MS. BARTNOFF: Because I'd ask that we have an opportunity to respond to whatever they filed.

THE COURT: Well -- all right, in 934 then it is

ordered that the Hopi Tribe have 30 days within which to file a supplemental response to the Government's motion for summary judgment and that the Government -- did the Navajos participate in that proceeding --

MS. BARTNOFF: Yes.

THE COURT: -- and file a response to the Government's motion?

MS. BARTNOFF: Yes.

THE COURT: All right. And, that the Hopi Tribe have -- and the United States then have 30 days within which to file a supplemental reply in 76-934.

MR. SHERMAN: Thank you, Your Honor.

Moving on to case number 76-935, Your Honor, we refer to this case as the JUA Accounting Case.

The best of my knowledge, there are no motions pending in this case. And it is the position of the Hopi Tribe that this matter should be set for trial in the spring of 1989.

We are happy to sit down with the Navajo Nation representatives and the United States to work out a discovery schedule for what additional discovery remains, but we see no reason why this matter could not be set for trial in the spring of 1989.

I might add, Your Honor, as to the length of trial, we do not estimate a trial that would be longer than

one to two weeks.

MS. BARTNOFF: Your Honor?

THE COURT: Yes, ma'am.

MS. BARTNOFF: All things being equal I think he is right.

THE COURT: Pardon?

MS. BARTNOFF: All things being equal I think he is right.

This ought to be the simplest of the cases. It may even be a case where once we see all the documents, it is possible that we can work something out. I'm not promising that, but it seems to me that this is the case where that is most likely.

THE COURT: Generally, I take it the documents originate with your clients?

MS. BARTNOFF: Some of them originate with the Navajo Tribe. I think one of the questions will be documents that involve the Federal Government and that is -- the only caveat to what I am saying now is that to the extent that there were fees that were collected by the Federal Government, and there is some question about whether they were then paid out equally between the Tribes, the paper trail may be a little bit more difficult than we now understand it to be.

I think there are some fees probably that were collected by the Hopi Tribe. There probably are a lot more

that were collected by the Navajo Tribe. And I believe, Your Honor, especially in the '70s, that almost all of this was collected by the Federal Government and that -- and I simply don't know at this time how complicated unraveling that is going to be.

MR. CARROLL: Your Honor, Steven Carroll, again.

THE COURT: Yes, sir.

MR. CARROLL: Your Honor, we are not a party to this case and we have complied with extensive discovery requests to, as I recall, to make available for inspection and copying all the leases and other data that is held in the Bureau of Indian Affairs' records.

I recall that we reprogrammed a computer in Albuquerque to identify each of these documents in this particular case. There is no outstanding discovery against the United States.

Thank you.

THE COURT: All right. Well, we may try to speed this one up just to have a record of doing something, I suppose.

All right.

MR. SHERMAN: Your Honor, the next case is 76-936, which we call the JUA Use Case.

In this case, the Hopis do have a motion for partial summary judgment pending.

The matter was fully briefed and argued in April of 1986. It is our position that we would like this motion decided as soon as possible.

We do not believe that further briefing is required and we would urge the Court if possible to enter an early decision on this matter.

Secondly, Your Honor, with respect to the discovery schedule, we believe that all remaining discovery can be completed by March of 1989, and we would urge that a trial date of May 1989 be set.

It is our view that this matter can be heard within two weeks, with an outside of three weeks. There are -- few expert witnesses would be involved, it is largely a records case. This is an important case for the Hopis to get to trial and we would urge that the Court set it as early as possible.

THE COURT: What is the difference between this and the actions taken by the Secretary with respect to the fair rental value of the land?

MR. SHERMAN: Well, these are pre-partition rental payments that the Hopis request beginning in 1962 until the date of partition.

THE COURT: I see.

MS. BARTNOFF: Your Honor, I understand from Mr. Green, that the motions that are pending were not argued and

have not been argued.

If the Hopi Tribe wants further briefing -- we are not sure that it is appropriate to resolve any of these issues piecemeal. If the Hopi Tribe is interested in further briefing, we obviously are as well, but --

THE COURT: They said they didn't want any.

MS. BARTNOFF: Oh, I thought they said they did.

MR. SHERMAN: No.

MS. BARTNOFF: I'm sorry.

We think they have been fully briefed. It is my understanding that they have not been argued.

And we have some serious questions about whether the issues that are raised in the Hopis' motion are issues that are appropriate to resolve before the factual record is done.

The March '89 date is certainly a good target. My sense is that the accounting case can go sooner than that, that the account, that we can -- we are basically saying the same time for the Accounting Case and for the Use Case, I think it makes sense to try to do the Accounting Case first, because it is simpler and that perhaps the summer of 1989 is more realistic than the spring of 1989 for this case.

Let me add that in terms of the difference between this and the Secretary's actions with regard to fair rental value post-partition, one of the differences here is

that this case is specifically limited to agricultural use and grazing use.

THE COURT: I may be wrong, the note I have, it says "The complaint alleges the value of business and residential use of the lands in connection with grazing and agricultural use to be 42 million dollars."

MS. BARTNOFF: It does, Your Honor. And, frankly that is something that as the new kid on the block I do not understand, since the statute specifically states that the liability is liability for agricultural use and for grazing use.

THE COURT: All right.

MR. SHERMAN: Your Honor, I would simply like to emphasize that we do think that a decision by this Court in response to the motion for partial summary judgment would be very helpful to the parties to direct and to expedite their discovery efforts in this particular case.

We think this is a different situation from the equalization case and the JUA damage case, but we have agreed to discuss with our clients the withdrawing of those motions.

THE COURT: All right. We will look at that then, and see what we can do.

MR. SHERMAN: The next case that I have on my list is 81-272, which is entitled Hopi v. Hodel.

This is a case, Your Honor, where the Hopi Tribe

challenged grazing regulations promulgated by the Secretary of Interior in 1981.

THE COURT: This, I think, is really my real first active involvement in the cases and, of course, I did enter some orders that were appealed and so forth.

MR. SHERMAN: There is a pending motion to stay implementation of the federal grazing regulations. It is my understanding that it is fully briefed and it was argued. The case has been essentially dormant since mid-1984.

I want to advise the Court that the Hopi Tribe is currently working on a comprehensive grazing ordinance and as part of this effort we are coordinating our actions with the Bureau of Indian Affairs.

The Hopi Tribe is confident it can work out an acceptable ordinance, both in terms of the Tribal Council approving the ordinance and the BIA approving the ordinance.

If so, Your Honor, it is my understanding that we would need to bring that ordinance to you for your approval, since there apparently is a March 11, 1977 order in the supplementry Healing proceedings that prohibited the Hopi from adopting and enforcing grazing regulations on the HPL.

This is obviously somewhat of a conflict with the 1980 Amendments, but the Court's earlier order was not modified.

If we are able to bring this to you, Your Honor,

and you approve the new ordinance then my guess is that that would likely moot the issues in Hopi v. Hodel. And if that is the case, we would then move to dismiss Hopi v. Hodel without prejudice.

THE COURT: All right. Did the -- did the '81 case involve more than grazing regulations in the sense did it get into financing at all, do you recall?

MR. SHERMAN: Perhaps Dan Jackson or Steve Carroll can answer that.

MR. JACKSON: Your Honor, Dan Jackson, that case, the '81 case, dealt primarily, if not exclusively with just the grazing regulation.

Now, there are parts of the Court's order that says that the Government is still supposed to do conservation practices and really revolve around the concurrence issue, but the issue -- it was not a factual issue about the fencing per se or anything like that, it was pretty much just on the regulations.

THE COURT: And the Navajo weren't a party to that proceeding?

MR. JACKSON: That's correct, Your Honor.

THE COURT: Again, certainly to the extent that the Hopi Tribe and the BIA or the Secretary can work out a regulation that would be acceptable to them, I would certainly welcome that and see where that would take us.

But, I would certainly think that would be of interest to the Hopis and again is really what they have been seeking for a long period of time, the effort -- the ability to effectively work with the Government, so I would certainly welcome that.

MR. DAHLSTROM: Your Honor, Eric Dahlstrom, Deputy Attorney General for the Navajo Nation.

The Navajo Tribe was granted status as an intervenor in 81-272, and therefore we would like to be treated as such.

And a review of the ongoing ordinance or regulation development obviously to the extent that there are Navajos remaining on the HPL, the Navajo Tribe maintains an interest in the regulations that affect their grazing.

We are not prepared at this point to agree that the manner in which those regulations would come before the Court, but clearly those regulations will be reviewed ultimately by this Court.

If I could just for a second, Your Honor, on a general matter, I am here today primarily because it is my responsibility to manage our outside retained counsel as Deputy Attorney General. And it is for that reason that I am here to see at one place all the lawyers that are involved in this litigation.

But let me just comment on a point you made

earlier with regard to the compensation of counsel. I have personally reviewed the compensation records for attorneys working for the Navajo Nation, at least for the last four or five years, and with regard to the cases that you are hearing now, not the 1934 litigation, the Federal Government has not paid one nickel of the litigation costs either as to reimbursement for expenses or attorneys.

These cases have been handled primarily by in-house counsel until recently with some outside assistance and all of those fees, both in-house, as well as our retained counsel with regard to the cases, other than 1934, have been paid entirely by the Navajo Nation General Fund.

Now, that may not be the case with regard to the Hopi lawyers, who have traditionally had the same lawyers on both sets of cases, but for the Navajos the only federal compensation we have received is for the 1934 litigation, which obviously is expensive litigation, but so is this. And the Navajo Tribe is bearing a real financial burden in the ongoing litigation costs.

THE COURT: Does the Navajo Tribe receive any sort of grants from the Federal Government for litigation or for legal expenses on the reservation?

MR. DAHLSTROM: We have received some payment of expert witness fees in water litigation, but nothing with regard to the Navajo-Hopi litigation, either as to experts,

costs or attorneys fees. The fees and the budget of the Department of Justice within the Navajo Nation is paid for entirely out of general fund revenues of the Navajo Nation.

THE COURT: How much -- can you tell me generally how much the Navajo Nation receives from the Federal Government annually by way of -- for any purposes or amounts?

MR. DAHLSTROM: You mean unrelated to this litigation?

THE COURT: Yes.

MR. DAHLSTROM: The Federal Grant Budget of the Navajo Nation, I am speaking from memory here, so it has to be plus or minus a substantial amount, is in the neighborhood of 50 to 60 million dollars a year.

THE COURT: Do they fund any part -- is there a CJA program or a Criminal Justice Act program to appoint attorneys to assist indigent people appearing in Navajo Tribal Courts? Do you have that?

MR. DAHLSTROM: None that I am aware of, Judge.

The Navajo Tribe funds a Legal Aid Program for indigent Navajos in both indigent and non-indigent Navajos in criminal cases, but the Navajo Legal Aid and Defender Program is financed entirely by payments by clients, as well as general fund revenues of the Navajo Nation.

THE COURT: You live on the Navajo Nation?

MR. DAHLSTROM: Yes. I have actually lived right

outside the perimeter of the Joint Use Area for about four years.

THE COURT: I am glad to see you come and welcome you.

Sometime, completely apart of the interest of the other people, one of the concerns I have as a federal judge is to see whether or not there couldn't be some program or -- with other tribes, or with the Tribes and the Federal Government having to do principally with juvenile offenders on the indian reservations, including the Navajo Reservation, and where they could be placed, if they are confined until they are released either at the age of majority or whatever it was.

And I would certainly appreciate your looking into it and perhaps we could communicate about that some other time, because it really is a concern to me that there is no such facility and that members, young people in the Navajo Tribe, as well as the other tribes, generally, are simply sent to institutions where they don't do well in the sense of their ability to associate with peers and programs and things like that.

MR. DAHLSTROM: I will advise the Court that the Nation is attempting to seek funds for a juvenile institution, which we really don't have an adequate facility at all.

And I do know that in the context of adult offenders that the Tribe has discussed with the Bureau of

Prisons the possibility of contracting for the provision of what would be called, I guess, Community Base Services that might be available to adult prisoners.

And I would think that similar arrangements where sentencing occurs, possibly through the federal court, and then incarceration or community service or over-site would be handled on the reservation. It would certainly be a better way to treat the youthful offender.

THE COURT: Sometime -- I don't know that it would ever happen, I have also talked with some of the congressional delegation from time to time, really, with respect to perhaps expanding the scope of tribal jurisdiction over Indian crimes, so that the Tribe would have more jurisdiction than six months and thus would be able to deal, I think, more effectively with many of those situations and particularly in light of tribal practices.

MR. DAHLSTROM: Certainly on the location, like Navajo, it makes sense. But I might advise the Court of two developments one is in the Omnibus Drug Control Act, I believe that is close to the right name, anyway that was passed at the end of last year, the jurisdiction of tribal courts, again, its misdemeanor jurisdiction was raised to one year. So many of the courts, including Navajo, are currently looking at amending their laws to see also whether they have the facilities to house people for a year.

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So that, together with the fact that the Assistant Secretary of Interior has now held that the Major Crimes Act is not exclusive federal jurisdiction, so that there will be prosecutions allowed in tribal court for all of those cases that for one reason or another the U.S. Attorney declines prosecution on.

THE COURT: Limited sentences up to six months?

MR. DAHLSTROM: It will be up to one year, if the Tribe amends its code to authorize that, but we have to have a place to put the people and that is where the money comes in.

Thank you.

THE COURT: All right. Thank you very much.

I appreciate your information also about the attorneys fees as well. At least --

MR. DAHLSTROM: Yes.

THE COURT: -- that's helpful and I'm sure that the Tribe has borne a burden.

One of the other things I would -- well, that is fine. I am glad to know that. And I appreciate your comments about these other matters as well and everyone else for having the patience to listen.

I would also ask -- I'm sure you would in any event, but when there is some resolution possible between the Tribe and the Secretary, that those regulations be submitted to the Navajo Tribe before they would come to Court.

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MR. SHERMAN: Yes. We would be happy to do that, Your Honor.

THE COURT: All right, thank you.

MR. SHERMAN: Your Honor, I just might mention in response to the Deputy Attorney General, there is provision under Public Law 93-531, Section 8(e) for funding in the 1934 case. And there is provision under Section 96-305, Section 29 for funding of the 1882 cases.

I had thought both Tribes were receiving funding, at least for -- limited funding to fund portions of this case, but perhaps I am mistaken.

Your Honor, the only other two cases that the Hopis are involved in on the remaining cases before you are two that I would like to address, because they are of great importance to the Hopis.

The first one is 85-801, which is what we term the HPL Rental Case.

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THE COURT: Let me just ask now before we proceed on, I noticed looking over the court reporter's shoulder and certainly I have been remiss as well, we have been going since 10:00 o'clock, and we have not taken any recess.

Are you all -- what is your schedule this afternoon? Could we recess until -- what do we have this afternoon?

THE CLERK: We have two groups of motions, Judge.

Could we do it at 3:00 o'clock?

THE COURT: Would it be possible to ask you to come back at 3:00 o'clock and we will conclude our discussion.

MR. SHERMAN: Fine with the Hopis.

THE COURT: Mr. Carroll?

MR. CARROLL: Your Honor, I would like to catch a flight at 3:30. I think that the discussion of the remaining cases can be done very quickly. If the Court would indulge me, I would appreciate it.

THE COURT: You don't think Mr. Jackson could cover for you?

MR. CARROLL: He made a mistake on the one presentation.

Yes, he could.

THE COURT: Let's do this, let's recess until 1:00 o'clock and -- 1:15 and then we will indulge Mr. Carroll at 1:15 until 1:30. And then we will go through the criminal calendar and then we will ask the rest of you to come back later on.

MR. CARROLL: Thank you very much.

THE COURT: Is that all right?

MR. DAHLSTROM: Your Honor, all the other remaining cases are covered by counsel and I need to return to the Navajo for a meeting this afternoon, so I will excuse myself, with the Court's permission.

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THE COURT: Thank you very much. We welcome you down, Mr. Dahlstrom. Who is the Attorney general now?

MR. DAHLSTROM: Michael Upshaw.

THE COURT: All right. Well, we welcome you and I'm sure you will be of assistance to us. You have been today.

All right. We will be in recess until 1:15.

(Whereupon a recess was taken.)

THE COURT: All right. Mr. Carroll, we were going to hear from you.

MR. CARROLL: Your Honor, I guess we are now addressing the cases that deal with the administrative review of the Secretarial determinations?

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THE COURT: Whatever you wanted to take care of.

MR. CARROLL: Oh, well, we will take care of that first, Your Honor.

The Assistant Secretary on last Friday made a decision on the homesite and farmsite rental value determinations. And for the period 1978 to '84, the rental due for those periods is $945,515.16.

Mr. Sherman and I have had a discussion that he would like to get this decided as quickly as possible. The United States agrees with that. This money is owing to the

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Hopi Tribe, and it is -- on the review, will be on the record.

The methodology for all these determinations is now complete, so that both on the grazing and the farmsite and homesite rental value determinations from '78 to '84, so we could file the record in this case very quickly and move it toward resolution.

THE COURT: Were there some of the cases or some of the rental arrangements that -- where it is the Government's position they weren't timely presented?

MR. CARROLL: Yes, Your Honor. The appeals from those rental determinations were not timely and therefore they are final. And that would be part of the briefing as to the administrative appeals. There are these two sets of decisions on the grazing on the one hand and the farmsite and homesite rental value determination.

The methodology is all set and we are prepared in the next few weeks to go forward on the '85, '86 and '87 determinations, so that those rental values will be in by June of this year.

THE COURT: And, those determinations impact on the Navajos?

MR. CARROLL: Yes, Your Honor. And in 85-801 and 87-1966, first of all, I have moved to consolidate the two cases and that has been unopposed and I believe in our telephone conversation on Friday that everyone agreed that the

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Court can take those motions as unopposed.

And also the Hopi Tribe has moved to intervene in 87-1966 and no one has opposed that motion.

THE COURT: All right. Thank you.

MR. SHERMAN: Your Honor, there are a few issues which I would like to raise with the Court apropos to these two separate matters, again, one is 85-801, and the other is 87-1966, which is the recent MacDonald v. Hodel challenge to the Department's 1978 to 1984 grazing determinations.

Your Honor, we very much would first like to urge the parties to agree that in the future, any challenges to these administrative determinations, would be made number one before this Court and secondly, would be made as part of 85-801.

We discussed this in our telephone conference on Friday and I believe all of the parties would agree to that format should there be future administrative challenges.

Secondly, Your Honor --

THE COURT: What is the reason for that?

MR. SHERMAN: Well, the reason is that the matter is currently obviously pending in the 801 case. And, it has taken us literally nine months to see the 1966 case tranferred to this Court from Washington. And meanwhile the Hopis are not being paid anything for past usage by the Navajos on the HPL.

So in an effort to break the log jam and to clarify these future procedures, I do believe if we can have a stipulation amongst the parties that these future -- any future challenges to the administrative determinations would be brought before this Court as part of 801, it would help to facilitate future review of these issues.

A second --

THE COURT: Any objection to that?

MS. BARTNOFF: Your Honor, we have no problem with that at all.

Our problem is this, a little bit, that we agree that there has been full review by the Interior Department of the '78 to '84 homesite-farmsite determination, although that determination apparently wasn't final until two days ago.

And we certainly don't have any problem having judicial review under the APA of that matter before this Court and if 85-801 is the appropriate vehicle, then that is fine.

Our other case, the 87-1966 case, which certainly can be consolidated, that is not a problem, but that case is in a somewhat different posture, Your Honor, because our problem there is that we believe we didn't get the opportunity for the administrative appeal to which we were entitled. And in fact the administrative appeal there, a year and a half after it was filed, more or less was dismissed with a finding that the Navajo Tribe wasn't timely after all.

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Number one, although the Assistant Secretary also made the comment that it wouldn't make any difference, so that we think that what we really are seeking in the 87-1966 case is a remand to the Interior Department to conduct the administrative review that frankly did not occur in that case.

We are not seeking that kind of a remand or won't be with regard to '78 '84 homesite and farmsite

Your Honor, seems to me that what really is essential, is that -- and I don't think there is any real dispute about this, is that there eventually be some review by this Court of the basic methodology used by the Secretary to determine homesite use, farmsite use and grazing use.

And as to the first two, homesite and farmsite, what they did last Friday once they lodge it will make that issue appropriate for review and I think what we might want to do today is just simply establish a schedule that 60 days after the Secretary files the record in that proceeding, that 60 days from then, we will file a motion before the Court in the nature, I suppose, of a motion for summary judgment with regard to our objections to the methodology used by the Secretary, since that is a straight forward review on the record.

In addition, Your Honor, we would propose to file a summary judgment motion with regard to our procedural challenges on the grazing matter, because we don't think that

there is an administrative record there that really is as full as it ought to be in light of the fact that effectively the administrative appeals did not go forward.

But you know, Your Honor, our sense is that -- I guess, there is one other point I would like to make, and that is that there is a motion for partial summary judgment now pending in 85-801.

And our general view of that motion -- and we agree with the Federal Government, believe it or not, on this score -- is that that motion is basically premature, because the appropriate review is a review to be taken under the APA once there is a final decision.

THE COURT: Hasn't there been a final decision in 85-801?

MS. BARTNOFF: 85-801 was actually filed before there was any administrative rental determination at all.

Now there are -- now there are, as I understand it, two final decisions.

One, the grazing one, which we are challenging primarily on procedural grounds. And two, the homesite-farmsite, which happened last Friday.

THE COURT: Well, the homesite one, et cetera, is that -- what is the difference between 87-1966 and 85-801?

MS. BARTNOFF: 85-801, was a lawsuit brought by the Hopi Tribe with regard to the procedures that the Interior

Department ought to use in making post-partition rental determinations under the Settlement Act.

And that was, if I may, Your Honor, a kind of abstract claim independent of any particular final determination by the Interior Department during the period when 85-801 was pending. There now has been one -- there was one final determination by the Secretary, which was the grazing determination and that is the subject of 87-1966 and we are happy to have it consolidated with 85-801. And now just last week there was another one.

But basically our view is the Court, if anybody wants to seek judicial review of the Secretary's determinations, that judicial review is appropriate only after the determination is made.

The other things that the Hopi Tribe asked for in 85-801, they probably should speak to and the Federal Government should, Your Honor, because a lot of the relief sought there is a question of getting the Secretary to make the decisions in the first place and to do it on a yearly basis and to have the Secretary involved in collecting the rent.

And that is not really something I am in a position to speak to, except we have now learned from Mr. Carroll that the Federal Government apparently is going to bring itself up to speed in getting the determinations out.

For the Navajo Tribe's part, Your Honor, the Navajo has already paid, I believe, about $460,000. And the Navajo Tribe did that even before there was actually any final determination made.

We believe that that -- that the amount that was paid might actually have been a little bit too much. In any event it has been paid. I know the Hopi Tribe will disagree with us on that score.

And we are prepared, once a determination is made at least, to make a payment directly to the Hopi Tribe of the amount of rent that we believe we owe in any particular year, but, you know, we understand that the Hopi Tribe hasn't been paid. It is also true that the final determinations were never made. And it is up to the Secretary under the statute to make those determinations, in the first instance.

But we certainly, as a management matter, Your Honor, have no trouble with 85-801 being the vehicle for whatever judicial review occurs of those determinations once they are made.

And what we presumably would be able to do at some point, once the procedural issues are cleared up, is to have this Court review the methodology on homesite-farmsite and grazing, and then at that point presumably everything will fall into place.

THE COURT: All right. Well, I will have to give

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some thought then to seeing how you resolve 85-801 and 87-1966 at least what is presently pending and --

MR. SHERMAN: Your Honor --

THE COURT: I take it there is no objection to the Hopi Tribe intervening in 87-1966; is that correct?

MS. BARTNOFF: We certainly do not object, Your Honor.

MR. CARROLL: Your Honor, no we do not object.

THE COURT: All right. Well, then it is ordered that their motion to intervene in 87-1966 is granted.

All right. What is your perception, counsel, of 85-801?

MR. SHERMAN: Your Honor, in 85-801, the Hopis have a pending motion for partial summary judgment, which has been fully briefed and I believe argued.

Most of the issues contained in the motion have been mooted by virtue of new policies and actions of the Department of Interior and by the agreement that we have reached today concerning the partition date.

There is one issue though that has not been resolved and we think it is an important issue for this Court to resolve. And that is the question of whether the Hopis are entitled to pre-judgment interest on these rental determinations.

This matter was brought before the Court in

October of 1985. I think the Court had considerable sympathy for the position, the arguments of the Hopi Tribe at that time on this issue.

And we do believe that a Court determination of that question will go a long way to halting the delays that have occurred in the payment of these past rental payments.

The Hopis now are owed, according to the Department of Interior, approximately a million dollars on the 1978 to 1984 grazing issue, not including pre-judgment interest.

And now, approximately $950,000 on the agricultural homesite use in that same period of time, not including pre-judgment interest.

And yet, with the exception of the one limited payment that was made by the Navajo Nation, which was done really at the prodding of this Court back in 1985, the Hopis have received virtually nothing for this decade of use by the Navajos of the HPL.

So we would strongly urge the Court to decide the motion for a partial summary judgment on the pre-judgment interest question.

And secondly, Your Honor, we see no reason now why the Court could not put the parties on a very aggressive two to three month briefing schedule on the grazing determination, that is the '78 '84 grazing determination, with

an oral argument set shortly thereafter.

And thirdly, we see no reason why the parties cannot be put in an aggressive briefing schedule with respect to the new homesite agricultural determination that was reached last Friday by the Department of Interior.

We would very much hope, Your Honor, that the Court could reach decision on each of these matters by mid-summer at the latest. And we are prepared to expedite our efforts if at all possible to see that done.

THE COURT: All right, thank you.

Let me ask the Navajo counsel, with respect to the homesite rental and agricultural rental involved in 87-1966 --

MS. BARTNOFF: I'm sorry, Your Honor, 87-1966 doesn't involve homesite or agricultural lease, it only involves grazing.

THE COURT: All right. What's the amount involved -- the new grazing rental was $1,328,025.27?

MS. BARTNOFF: It is something like 1.3 million dollars. That will have to be revised somewhat, though I don't think the numbers will be distinctively different. That will be revised somewhat to reflect the changed date of partition as, in fact, Your Honor, will the $950,000 from last Friday.

THE COURT: What amount of that is contested by

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the Navajos?

MS. BARTNOFF: Your Honor, I would have to look at the numbers. I don't recall precisely what the numbers are.

THE COURT: Is there any reason why the amount that is uncontested shouldn't be paid?

MS. BARTNOFF: We agree to pay it. We think we have as to the grazing.

THE COURT: You think the $400,000 that you have paid satisfies --

MS. BARTNOFF: By our calculations, according to our experts, the 459,000 that we have already paid covers -- in fact, it somewhat exceeds the amount that they believe to be the appropriate valuation for the grazing rental. And we are --

THE COURT: Between '78 --

MS. BARTNOFF: And '84.

THE COURT: -- and '84?

MS. BARTNOFF: Yes. Actually ought to be from '79 to '84, which changed a little bit.

And we are prepared, and we have made this clear to the Hopi Tribe, to pay to the Hopi Tribe the amounts that we don't contest as soon as rental determinations are made.

We haven't even gotten -- we haven't even formally received the one that was made last Friday yet and

that number, as I indicated is probably going to change somewhat, given the fact --

THE COURT: The determination that was made last Friday covers what?

MS. BARTNOFF: It covers homesite and farmsite use from August 1st 1978 through, I believe, the end of 1984.

THE COURT: There was a prior determination on that; isn't that correct?

MS. BARTNOFF: No. I think that was the first one. There may have been an earlier -- that is the final determination for that period. And that has to be revised to change the date from August 1st, 1978 to April 18th, 1979.

And we are prepared to review that to determine the amount that we believe we owe and to pay it promptly to the Hopi Tribe.

THE COURT: That was the determination that was finalized just the other day?

MS. BARTNOFF: Yes. Your Honor, there was some confusion, because the Interior Board of Indian Appeals affirmed the basic methodology, but recognized that there were factual errors. And since sometime last summer we have actually been in the process of making filings with the Phoenix area office with regard to the factual errors and there were some revisions that were made in the final determination in light of the factual errors that were

suggested by the Tribes.

THE COURT: What was the amount -- or what was your dispute in effect with the prior determinations that I understand were made on or about May 15th, 1987?

Is that correct? Mr. Jackson, would you know?

MS. BARTNOFF: On homesite and farmsite?

THE COURT: Yes. Homesite and agricultural rental.

MS. BARTNOFF: Our dispute, Your Honor, is with the methodology that's been used to calculate homesite and farmsite use, including whether the lease comparables that were used were the appropriate comparables and whether the methodology for farmsite use didn't double count.

There are a number of other issues, Your Honor. For example, the Interior Department assumes that all Navajo homesites are a mininum of an acre, no matter how large they actually are.

THE COURT: Well, again I take it there was some amount of what was previously determined to be almost a million dollars that you didnt disagree with; is that correct?

MS. BARTNOFF: On the homesite and farmsite?

THE COURT: Yes.

MS. BARTNOFF: Yes.

THE COURT: How much?

MS. BARTNOFF: I don't know the answer to that.

I can't give you a figure today. I'm not sure that we have calculated it quite that way. We have looked in terms of what we think is appropriate, but we certainly will calculate it and will inform the Court and pay the Hopis.

THE COURT: Between 1978 or 1979 and 1984 I take it the Navajo Tribe has not paid any monies for homesite rental and farmsite rental?

MS. BARTNOFF: That's correct, Your Honor. It is also correct that up until last Friday there was no final determination by the Secretary of Interior, which we consider to be a prerequisite to paying.

Now, that the Secretary apparently has speeded up the process I am sure we will get -- you know, some payments will be more forthcoming, but until the Secretary made the determination, we weren't in a position to and argue to be liable for payment.

THE COURT: You say the payments will be "more forthcoming"?

MS. BARTNOFF: In other words now that the Secretary has -- the Secretary indicates, as I understand it, that we will have an '85 decision next month and an '86 decision the following month.

THE COURT: I'm not interested in '85 and '86. I am interested in '78 -- or '79 through '84.

MS. BARTNOFF: We are prepared --

THE COURT: Is there any reason why I shouldn't order the uncontested amounts paid forthwith?

MS. DARTNOFF: We are prepared to do that, Your Honor.

THE COURT: All right. Those amounts that are uncontested of the final determination shall be paid within 10 days of this date. And we can still keep the interest alive, at least that issue to be addressed.

But again there is no reason why and I am sure the Navajo Tribe would agree, as they seemingly did on one other occasion after some prompting, that those amounts be paid, because they are substantial. All right.

MS. BARTNOFF: Your Honor, not only that, but the Chairman of the Navajo Tribe in correspondence with the Chairman of the Hopi Tribe has stated exactly that.

What we will do is in 10 days is to make a payment to the Hopi Tribe and inform the Court of the amount that we consider uncontested.

THE COURT: All right. That will be appreciated. Anything else, Mr. Carroll?

MR. CARROLL: Your Honor, there are two remaining cases that I think can be taken care of very quickly.

The first is Bennally versus Hodel. And the second is Navajo Nation versus Hodel.

Mr. Osetek I see is here. The only pending

motion in Bennally versus Hodel is our motion to dismiss the amended complaint. That is briefed and ripe for decision and I would submit that the Court could decide that question and I will leave the Navajo Nation versus Hodel case for Mr. Green.

THE COURT: All right. Well, according to my note in 86-912, which is the Hodel case, the only matters that seems to be is the defendant's motion to dismiss the first amended complaint.

All right. Now, do you have any comment on that, Mr. Green?

MR. GREEN: Not on Bennally versus Hodel, Your Honor, but on Navajo Nation versus Hodel, I think I can dispose of that quickly.

THE COURT: All right.

MR. GREEN: I discussed that with Steve Carroll this morning that the Navajo Tribe is considering dismissing that lawsuit without prejudice.

We expect to be able to probably do that within the next 60 days. We are discussing it with Mr. Carroll now.

There is some pending federal legislation that relates to this that may moot the case out and so we expect to be able to dispose of it shortly.

THE COURT: All right. Thank you very much.

So with those notes then, is there anything else that we need to address today?

Let me say this, one I appreciate your cooperation and really what -- without criticizing any of the fine lawyers that we had before, really a sense of resolution to get matters moving and to try to work out problems. And I see more resolution really through the discussions here today or preceding today than really I have seen since I have been here, and that is going on eight years in September, so that is very helpful.

I think what I will also do is set a further status hearing sometime in the summer to see where we are, where I am on some of these things and where we are on some of the other matters.

And, I think that will be helpful as well and we will try to arrange a time, if we could, that would be convenient if you are going to be here for some other purposes.

But I would like to do that perhaps by mid-July, simply to have a feel for what is happening and where some of these things are.

So we will be in touch with each of you in that -- for that purpose. All right?

MS. BARTNOFF: Thank you.

MR. SCARBORO: Thank you, Your Honor.

THE COURT: Thank you all very much.

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(Whereupon the above proceedings are terminated.)

I, BRIDGET BRITTAN, Official Court Reporter for the United States District Court for the District of Arizona do hereby certify that the foregoing pages constitute a full, true and accurate transcript of the proceedings had in this matter on March 21, 1988, all done to the best of my skill and ability.

DATED at Phoenix, Arizona, this ____ day of March, 1988.

_____

BRIDGET BRITTAN

Official Court Reporter

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

IVAN SIDNEY, et al., Plaintiffs, vs. PETER MacDONALD, et al., Defendant.	)	CIV 74-842 PHX EHC

STATUS HEARINGS

B e f o r e: THE HONORABLE EARL H. CARROLL, JUDGE

Phoenix, Arizona
March 21, 1988

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Appearances:

For the Plaintiffs:	JAMES SCARBORO DAVID WARREN HARRIS SHERMAN Attorneys at Law
For the Defendants:	TERRY FENZL JOHN ROGERS CRAIG SOLAND AMY GITTLER Attorneys at Law
For the Paiute:	KIM JEROME GOTTSCHALK ROBERT PEREGOY Attorneys at Law

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Phoenix, Arizona
March 21, 1988

PROCEEDINGS

THE CLERK: Civil 74-842, Ivan Sidney versus Peter MacDonald, et al., hearing motion to set trial date.

Would counsel please identify yourselves for the record when you address the Court?

MR. SCARBORO: Morning, Your Honor.

Jim Scarboro on behalf of the Hopi Tribe, along with me today are my colleagues David Warren and Harris Sherman.

THE COURT: Thank you.

MR. SCARBORO: Your Honor, the Hopi Tribe filed this motion, as you know, in the hope that it might bring about some activity in getting the case set for trial.

And as you are also painfully aware, this case has been pending since 1974. It appears that all parties agree that a trial, if possible, should be set. There is a disagreement about the scope and nature of the trial.

THE COURT: Let me ask in that respect your judgment opinion as to why essentially the scope and area of inquiry in this case should be any different than was followed in the 1882 case?

And I don't know all of that -- what all that

involves, but aren't the issues here the same as for the earlier case, the earlier Reservation Act?

MR. SCARBORO: They are not identical, Your Honor, but they are certainly comparable.

But the issue that has been raised in the responsive briefs is whether we should have a three-way trial or a two-way trial.

THE COURT: Now, you are talking about the Pauites?

MR. SCARBORO: Yes.

THE COURT: Well, I was essentially asking -- I suppose the thrust of my inquiry was really insofar as issues having to do with whether the Hopis, for instance, had to actually be occupying the land they claim or whether they had some ancestral rights or religious claims, things like that, why this trial should be different than the earlier one.

MR. SCARBORO: The issues are, of course, peculiar to this case as defined by the Ninth Circuit, but they are certainly similar and they are certainly related and the inquiries are comparable.

But, the main question I think is really one that the Hopi Tribe is not as interested in as the Navajo and the Paiute are. That is the question whether there should be a three-way proceeding at this point or a two-way.

We have a preference for a three-way trial,

because we would like to have one proceeding and we think that if it is ultimately determined that the Paiutes are not entitled to participate in the trial, we can back out whatever findings particularly involve the Paiutes.

But it does appear to us very likely that the Paiutes are going to be recognized by the Federal Government and we think the most efficient solution is to go forward with all three parties.

But as a second alternative, and this one is favored by the Navajo, we would be willing to go forward with the two-way trial as soon as it can be set.

Your Honor, I don't -- I don't think it is necessary this morning for the Court to determine the trial date.

The most important thing from the Hopi perspective is to determine what kind of proceeding we are going to have. And I don't think there will be any difficulty working with counsel for the Navajo and counsel for the Paiute in setting a calendar for the remaining discovery and for the resolution of outstanding disputes.

I think both -- they have been pretty cooperative thus far and I see no problem in counsel getting together once we have some guidance from you and come back to you with a more precise proposal on the date of the trial, how much discovery needs to be done and what disputes need to be

resolved. There are --

THE COURT: In any evnt you wouldn't look at anything beyond March 1st of 1989, I take it?

MR. SCARBORO: Of course, we would, Your Honor.

THE COURT: You would be looking beyond that?

MR. SCARBORO: Would we, would the Hopi be willing to consider a date beyond that?

THE COURT: No. You are not seeking to extend the trial date beyond the commencement date of March 1?

MR. SCARBORO: We would like to go forward as soon as practicable, recognizing the difficulties that everyone may have getting everything ready.

For example, if there is to be a three-way trial, the Navajo have taken the position -- and perhaps properly that that date is too soon. That more needs to be done and can be done by that time. That may be the case. I have no -- I think there would be no difficulty in sitting down with Mr. Penzl and Mr. Gottschalk representing the Navajo and the Paiute in working out a sensible discovery schedule that fits everyone's calendars and to come back to you with a more precise proposal as to a trial date.

I guess what I am trying to say is the most important thing, from our perspective, is for you to give us some guidance as to what kind of a trial we are going to have, because that will have a lot to do with determining, of

course, how quickly we can have it and who needs to do what in order to get ready for it.

And there are some -- I just wanted to underscore that there are some outstanding discovery disputes. There is an outstanding motion or two, but I think that with respect to at least one of the discovery disputes between the Navajo and the Hopi, we are close to having that resolved, with respect to another one, we may not.

But I think we could -- we could do some further conferring on that and get back to you with a more precise schedule for getting matters that we cannot resolve resolved by you.

Unless you have questions of me, I think the most sensible thing to do is let the Navajo and the Paiutes address this issue of what sort of a trial we ought to have.

THE COURT: All right, thank you.

MR. PENZL: Morning, Your Honor, may it please the Court, my name is Terry Penzl appearing for the Navajo Tribe. With me this morning are John Rogers, Craig Soland and Amy Gittler from my firm.

Mr. Scarboro is correct that the parties are in agreement that a trial should be set.

As the Court may be aware it has been the Navajos' position for years and years that there should be a prompt trial, because there is a freeze in place, which was at

first an administrative freeze and is now a statutory freeze, which is working a unique hardship on the Navajo people living on portions of the Navajo Reservation.

However, the request for a prompt trial -- just going back for a little bit of history, was put into a contest by the appearance of the so-called San Juan Southern Paiutes who applied to intervene. At that time Judge Copple more or less put in abeyance the question of a trial setting while waiting for the Paiute issue to be resolved.

THE COURT: Let me ask, Mr. Penzl, and then we will hear from the Paiute counsel, does their claim involve areas outside of the 1934 Reservation?

MR. PENZL: The jurisdiction of this Court extends only to those lands within the 1934 Reservation.

THE COURT: Are they claiming -- as you understand it, are they claiming lands outside that reservation?

MR. PENZL: Not in this proceeding, Your Honor, insofar as I understand it. And they certainly are not claiming any lands in this proceeding, which lands are located in the 1882 area.

For example --

THE COURT: Are any of the lands in the '34 area in Utah?

MR. PENZL: No, Your Honor.

THE COURT: So the 1934 Reservation was limited to lands in Arizona?

MR. FENZL: Limited to the lands described in the 1934 statute, the northern boundary of which was the Utah Arizona border.

THE COURT: Okay.

MR. FENZL: Now, Your Honor, there are some very practical problems that are presented by the alternative, which the Hopi Tribe threw out for consideration and which the Paiute counsel have adopted, and that is, the proposal for a three-way trial with a conditional sort of intervention. And the problems that bother me the most are two-fold.

First of all, this group of people who want to be recognized as a tribe and to appear separately here are -- it is our position -- basically Navajo Indians. A large number of them are enrolled in the Navajo Tribe.

So that if they are not recognized as a separate entity, then they are my clients, and I must represent them at the trial. I must talk to them, I must prepare them to testify, I must integrate the facts known to them with those known to others of my clients. That is going to be impossible to do if we have this conditional sort of appearance.

The second issue is, let us suppose that the decision of the Bureau of Indian Affairs for the Executive Branch of the Federal Government is somehow material to this

Court's decision on the issue of intervention, that is yet to be fully briefed. I think both sides allude to that in their papers. It may be given some weight that may be binding. I imagine both sides can reserve judgment on that until they see what the Federal Government does. But it is at least agreed that it is material.

Now, suppose that the Bureau of Indian Affairs follows the schedule, which the Hopi Tribe has set forth in their papers, and we have no reason to disagree with their arithmetic, they would not reach a decision until 1990, 1991, 1992, there may be some appeals that would add to that.

Suppose we did have a three-way trial and it came to conclusion before that was reached, then the matter still has to sit in abeyance until we see what the Federal Government is going to do.

So we have gained nothing by having the conditional trial, that is the conditional intervention and the three-way trial, except to confuse the issues and to interject the possibility that we would have to start all over again if the people enrolled in the Navajo Tribe, who would like to be treated as a separate tribe, turn out to have been my clients and then we have to start all over again.

So I suggest that the proposal for conditional intervention doesn't make much sense.

We are perfectly happy to proceed with the trial

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of the Navajo and the Hopi Tribes this coming spring.

Now, as far as whether it is actually March 1 or some other date, there are some scheduling problems that our firm has and we would have to work those out with counsel, and I'm sure as Mr. Scarboro has said we can work with that.

The particular problem is that Mr. Soland and I are in trial right now in California where we have been since Labor Day of last year and every expectation that we are going to be there through Labor Day of this year. And that has sort of put a crimp in some of my clients. But we can work out those problems I think once the parameters of the proposed trial are set forth.

If there were to be some role for the so-called Paiutes at the present time there very definitely is some additional discovery that needs to be done. Regardless of whether the Paiutes are in or out for this trial, there would still need to be a certain amount of discovery done between the Navajos and the Hopis. Mr. Scarboro and I have talked about that. We are both aware of that and I think we can work it out.

THE COURT: What discovery remains to be done vis-a-vis the Navajos and Hopis?

MR. FENZL: There are two kinds, Your Honor. And one is this rolling thunder where we are all preserving testimony of aged witnesses. And, of course, once we have a

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trial date, we can all make our calculations based on the health of the witnesses and so forth. More importantly is the depositions of expert witnesses.

Your Honor ordered in November of 1985 for the parties to prepare and have their experts prepare reports, which were then exchanged on the dates ordered by Your Honor.

Those need to be followed up by depositions, which have been put off for one reason or other. Among other things, there has been some supplementing of those reports which are not yet complete, but again I think counsel can work out a sensible schedule for that.

THE COURT: How many, just broadly, as best you recall now, Mr. Penzl, how many expert witnesses do the Navajos have?

MR. PENZL: I believe the Navajos have five expert witnesses. I believe the Hopis had seven.

MR. SCARBORO: Yes.

MR. PENZL: And, that is -- those are the people whose reports, as I said, were delivered, were exchanged early in 1986 and we have been working within the confines of those.

(Counsel confer off the record.)

MR. PENZL: Well, I don't know.

Your Honor, Mr. Scarboro does raise a good point. I don't know whether there will be any effort to depose lay witnesses designated as trial witnesses.

There have not been realistic lists of witnesses exchanged at the present time. I suspect that that is something that we are going to have to evaluate in connection with work between counsel on a proposed pretrial order.

Once we finally do get down to a real witness list, I expect each party will want to evaluate whether to depose those lay witnesses, but except for the sort of self-serving -- the depositions scheduled by the proponant of the witness to preserve the testimony, there has been no deposition to date of a trial witness, a lay trial witness.

THE COURT: How many -- your general recollection, how many depositions have in fact been taken, regardless of who noticed them?

MR. PENZL: I would say on the order of a dozen. More than that? 20?

MR. SCARBORO: Perhaps.

THE COURT: I'm not --

MR. PENZL: 10 to 20. Frankly it is not a detail I brought with me.

THE COURT: Do you recall when the last deposition was taken, approximately?

MR. PENZL: That is easy to remember, last week.

THE COURT: All right. Thank you very much.

MR. PENZL: Thank you, Your Honor.

THE COURT: All right. For the Paiutes? If they

exist.

MR. GOTTSCHALK: I assure you they do, Your Honor.

May it please the Court, my name is Kim Gottschalk, and I'm here today on behalf of the San Juan Southern Paiute Tribe, along with my colleague, Robert Peregoy.

The last deposition, as a matter of fact, Your Honor, was of a gentleman called Blue Knee, who was a Paiute. So, we are involved in the ongoing discovery phase of this case. And I would encourage the Court to continue that and expand it slightly to allow the Paiutes to prepare at least as though they were going to trial.

I think there is an artificial problem created by assuming that the trial date needs to be set and a decision made as to whether the Paiutes will participate at the front end.

One alternative would be to order that the Paiutes participate in the preparation for trial as full parties and let's see how we come out down the road as the trial date nears and then see if the situation is clarified.

THE COURT: Let me ask if I could, have the Paiutes, with respect to their claim, generally identified what their claim is and specifically does it include any defined areas? Or is it simply a broad or general claim?

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MR. GOTTSCHALK: Your Honor, it is a very modest claim. And, actually, I believe the Hopi and Navajo exchanged expert reports as to this, relating to the Hopi land claim in 1986.

We provided to the Navajo Tribe in August of 1984 a draft of our expert's report on land claim. And obviously they are doing some more work now, but I don't expect the new product to be that different from --

THE COURT: But it does define an area?

MR. GOTTSCHALK: Defines an area of very modest scope, Your Honor.

THE COURT: Is it around an identified community?

MR. GOTTSCHALK: There are two communities, Your Honor. There is one west of Tuba City and then there is one around Navajo Mountain --

THE COURT: You --

MR. GOTTSCHALK: -- which is up by the Arizona Utah border.

There are actually people who live on the Utah side of the border, but have fields on the Arizona side and do grazing on the Arizona side.

THE COURT: And you say the one is -- the other location?

MR. GOTTSCHALK: Around Tuba City, west of Tuba City, probably eight or ten miles.

THE COURT: Hoangavhi?

MR. GOTTSCHALK: It is further west than that and north a little bit. It is just along Highway 89. It is exactly --

THE COURT: North of the Gap?

MR. GOTTSCHALK: It is exactly 7.7 miles north of the turn off to Tuba City, Highway 160.

THE COURT: With respect to the interest of the Paiutes, assuming let's say that you participate as a party in the proceeding, would you be in a position to do that by March 1st, 1989?

MR. GOTTSCHALK: Yes, we would, Your Honor.

And, as I point out to Your Honor, there is an alternative to ruling on the whole issue today, but even if the Court were to make a ruling that the Paiutes will proceed in the trial, I think Mr. Fenzl is bringing out a parade of horribles that may or may not materialize and are not as horrible as he points out.

If we go to trial and put on our proof and if we are ultimately found to be members of the Navajo Tribe, obviously the Hopi are not going to end up with that land. So that is not really a problem.

And, as far as the Bureau's time schedule on acknowledgement, it could coincide quite nicely with the March trial date.

THE COURT: With respect to the people who claim to be the Paiute Tribe, are they identified insofar as the Navajo census records are concerned in some way as being -- having some Paiute ancestry?

MR. GOTTSCHALK: I believe a lot of them are, Your Honor, yes.

THE COURT: All right, thank you.

Mr. Scarboro, insofar as the Hopis are concerned and -- have you reviewed the extent of the area and interest claimed by the Paiutes under their 1984 filing?

MR. SCARBORO: Yes, we have, Your Honor.

THE COURT: Does the Hopi assert any claim or interest in those lands?

MR. SCARBORO: There is a modest potential overlap. It is not possible to determine precisely, because the report that the Paiutes prepared was preliminary and it's going to be refined. And there does appear to be a small amount of overlap, but not a large amount.

THE COURT: And what area would that be in?

MR. SCARBORO: Well, Pasture Canyon, the northern part of Pasture Canyon.

THE COURT: Is that up closer to the Utah border?

MR. SCARBORO: No, no, that is just north of Tuba City.

THE COURT: All right. Well, I certainly do

recognize that we have to do something about the Paiutes.

And I, of course, read again the Ninth Circuit memorandum opinion involving the Paiutes. And the opinion suggests, of course, that there could be an evidentiary hearing by the Court respecting the Paiutes as such.

But in any event, I will get something out promptly on this issue.

And I think my predisposition is to simply allow the Paiutes to intervene through Mr. Gottschalk and his firm and group. And the extent of their interest and whether or not they will wind up with any interest, of course, can then be resolved in a final proceeding.

But, it seems to me that to delay those matters would be unreasonable to -- until the Paiute status may ultimately be resolved, because as we know that can be a very long journey. So in any event we will get something out.

And also, I think insofar as anticipating it is concerned, I will in that order also set what we refer to as our Rule 42(c) order, which I would expect would be sometime in perhaps September or October. And that would then -- or a little later. But at least sufficient to contemplate a March 1st, 1989 trial date, because I am also persuaded that until such time as we do have a definite trial date, one our schedule is going to continue to be in conflict here.

And it really is necessary, if we are going to be

looking at any kind of an extended trial and by extended trial, more than 30 days, then we have to make adjustments too, for criminal cases and other matters. So that is really what I would expect and also expect that that would give you then sufficient time to do these other things.

I would also caution you that it is going to be encumbent on each of the lawyers who are responsible for the litigation to cooperate together and to identify people who are expected to be witnesses, because as you know also under our local Rule 42, those people are intended to be identified as they become known.

And I think all too often lawyers who are not as sophisticated and well prepared as you all are, or will be, simply don't do any exchange of information until the Rule 42(c) order is first presented to someone. And then there is a whole list of people, witnesses or documents that have never been heard of.

And so I would think that, certainly, no later than the 1st of July, tentatively all of your witnesses should be identified, if not earlier. They should have been identified earlier, at least insofar as they are known. And then if people want to depose them or make plans to depose them, then they can do that and also be looking at exhibits and things like that. But I don't think you should expect that someone is going to propose a Rule 42(c) order, in this

case the Hopis, and then expect to then have a period of long discovery after that.

As I read Rule 42(c) there isn't -- there should be no discovery except with leave of Court after the Rule 42(c) date has been met.

So I think really the time between the Rule 42(c) filing and the trial date is simply to then permit everyone to actually get prepared for trial, get their witnesses prepared, get the necessary exhibits and in some form to do that.

So I simply call your attention to those matters so that you are not going to be caught short.

I would think also we would try some of the case in Prescott. We would perhaps try some of the case in Phoenix. And to the extent possible, we might try some of the case in northern Arizona, either in Flagstaff or perhaps in Tuba City, if we could find a facility sometime that would accomodate us for purposes -- for persons who live in that area, or simply to take it, in effect, to the people that would want to participate there.

So we will get something out certainly in the next several weeks on this issue.

But as I say, my predisposition is to let the Paiutes intervene, without a condition as such, they simply intervene. They are there. And what rights they are going to have, of course, will be determined at the end of the

proceeding, if any.

All right. So that motion then is taken under advisement, but we will get something out to be moving along on that.

And I'm also concerned in a sense that we don't, in accommodating this side of the reservation, or this part of the reservation, that we don't ignore our other problems involving the 1882 Reservation, because after all to the extent we can do it, that ought to have some priority.

MR. SCARBORO: Thank you, Your Honor.

MR. FENZL: Thank you, Your Honor.

THE COURT: All right. You all aren't just planning on leaving?

MR. FENZL: No, we are not.

THE COURT: Well, I thought -- the reason I say that is, I thought that perhaps we could discuss generally in a perhaps more informal way some of the other things that we have pending and how we -- if there are matters that are of importance and also to be thinking about what our trial date should be there and whether we really should have an earlier -- so, Sally you want to call it?

We will call our other matters.

MR. FENZL: Your Honor, do you wish to hear further about the 1934 case? Is that part of the status conference?

THE COURT: A --

MR. FENZL: Other counsel for the Navajo Tribe are present and will address the other --

THE COURT: I don't think so, Mr. Fenzl, except as I say we have mentioned the March '89 date. And we will find out a little bit more about these other cases and whether or not we can pick or choose among them and how they might fit in.

I would think that, depending on the circumstances, recognizing that March 1, 1989 is not that long away in a lawyer's life, I would certainly like to get something done in these other cases and maybe we will have to give that priority over the trial setting in the 1934 Reservation.

MR. FENZL: Your Honor, in preparing your order on the scheduling here, I would ask the Court's indulgence in light of other commitments that I have, so that I can give some personal attention, particularly to the Rule 42(c) order, and if it can be scheduled somewhat later than September, it certainly would result in --

THE COURT: Well, I would think if we had a 60-day period, for instance, between the Rule 42(c) order and the trial date, then that would seem to give everyone an opportunity to know where they are and what they would be doing.

MR. SCARBORO: Your Honor, we also have no objection to working among counsel, sitting down together and just making absolutely sure that we know what we are doing that everything that we need to get done can be done in the time we set forth.

You know we picked this date of March 1st, really without benefit of knowing exactly what the Navajo would have to say or the Paiutes, and I think it probably is going to be important for us all to sit down together and spend the morning going over exactly what it is we need to get done.

THE COURT: That is good. I think, as well, you know, depending on what we do with these other cases we may have to put it back.

But, you know, at some time we could essentially be looking at spending a lot of time together on all of the cases that are around.

MR. PENZL: If that is enough.

THE COURT: Thank you.

MR. GOTTSCHALK: Your Honor, is there reason for the Paiute counsel to stay?

THE COURT: I don't think so.

Thank you very much for coming and participating.

MR. GOTTSCHALK: Thank you, Your Honor.

(Whereupon the above proceedings are terminated.)

I, BRIDGET BRITTAN, Official Court Reporter for the United States District for the District of Arizona do hereby certify that the foregoing pages constitute a full, true and accurate transcript of the proceedings had in this matter on March 21, 1988, all done to the best of my skill and ability.

DATED at Phoenix, Arizona this _____ day of _____, 1988.

_____

BRIDGET BRITTAN

Official Court Reporter

Statement of Ivan Sidney, Chairman of the Hopi Tribe, on the Amendments to S. 1236 Proposed by the Bureau of Indian Affairs and the Navajo-Hopi Indian Relocation Commission Before the Senate Select Committee on Indian Affairs

The Bureau of Indian Affairs ("the BIA") and the Navajo-Hopi Indian Relocation Commission ("the Commission") have proposed substitute amendments to S. 1236, intended to displace those amendments proposed by Senator McCain. The Administration's proposed amendments would affect the funding levels available to the relocation process; judicial resolution of Sidney v. MacDonald, Civ. No. 74-842, the dispute concerning land under the Act of June 14, 1934 ("1934 Act"); funding for community and economic development, infrastructure, and social services to benefit Navajo relocatees moving to the New Lands; the funding of attorneys' fees in the ongoing litigation among the Hopi and Navajo tribes and the government; payment of rentals due under the Navajo-Hopi Settlement Act of 1974, Pub. L. 93-531, as amended ("the Settlement Act"); and the liability of the United States for damage to the former Joint Use Area.

As the Hopi Tribe has stated in other presentations to this Committee in response to S. 1236 and other proposed amendments, the tribe strongly endorses the

goals of expediting relocation and resolution of the 1934 Act land dispute between the Hopi Tribe and the Navajo Tribe. To the extent that the Administration's proposals would provide increased levels of funding and benefits for the timely accomplishment of those goals, the tribe supports them. Several of the Administration's proposed amendments, however, would seriously prejudice the Hopi Tribe's ability to enforce its rights under the Settlement Act and mistakenly would relieve the United States of its current liability under the Settlement Act for damage to tribal lands.

The Hopi Tribe previously stated that it would support Senator McCain's proposals to restructure the Commission if they would expedite the relocation process. The Administration disagrees with the amendments originally proposed by Senator McCain to replace the current Commission with a single commissioner and to convert the Commission staff to career civil service status. According to the Administration, those changes, and the requirement of another relocation report and plan, would further delay completion of the relocation process. We believe that the Committee should consider closely the position of the Administration on this issue. As previously stated, the Hopi Tribe's highest priority is to see relocation accomplished. It may well

be that a major restructuring of the Commission at this late date would contribute to delay in the relocation process.

1. Housing and Bonus Payments

The Hopi Tribe endorses the proposal to increase the appropriations authorized in the Settlement Act, both for the amount of incentive payments to individuals who voluntarily apply for relocation benefits and for the funding authorized for relocation housing, moving expenses, and payment for improvements left on the Hopi Partitioned Lands ("HPL"). The Hopi Tribe believes that Congress should appropriate the full amount necessary to complete the process of relocating Navajo living on the HPL within two years and should make clear that relocation of Navajos living on the HPL should be given the priority in the expenditure of the appropriations. The prolonged presence of Navajos on the HPL has deprived the Hopi Tribe of the use and enjoyment of its lands, has resulted in infringement of Hopi sovereignty, and has perpetuated an atmosphere of conflict and tension between the Navajo and Hopi tribes. Finally, the Hopi Tribe

understands that the Navajo Tribe has contributed to the delay in the relocation process, especially with respect to the New Lands. The Hopi Tribe believes that the Navajo Tribe has a responsibility to assist its own people in the relocation process, and that no one should be permitted to interfere with or to obstruct the process.

2. Discretionary Fund

The Administration's description of this proposed amendment sounds reasonable in general terms, but is vague. The Hopi Tribe suggests that the Administration provide a more detailed explanation of how this change would affect current practice. In particular, would the Commission's increased discretion under the proposed amendment allow the Commission to assist the Hopi Tribe in regaining use of the HPL? For example, would the Commission provide funds for infrastructure or housing projects for Hopi families on the HPL?

3. Proposals Affecting Rights in the 1934 Reservation

Section 3 of the Administration's proposed amendments to S. 1236 provides for three amendments to the 1974 Settlement Act, each of which would unjustifiably

and adversely affect the Hopi Tribe's position in Sidney v. MacDonald.

A. Expediting Judicial Determination and Review

Section 3(a) would provide for direct appeal to the United States Supreme Court from the judgment of the United States District Court for the District of Arizona in Sidney v. MacDonald (and from the judgment in any other action which may be brought under section 8 of the Settlement Act, 25 U.S.C. § 640d-7).*/ Normally,

*/ We understand this to be the intent of the provision. There are, however, two ambiguities. First, the proposed amendment provides for the addition of the following language to section 8: "(f) An action brought under this section after the enactment of this subsection shall be reviewable by appeal to the Supreme Court of the United States." By its terms, the provision does not apply to Sidney v. MacDonald, which was brought before the enactment of the subsection. The drafters probably intended that the subsection read: "After the enactment of this subsection, an action brought under this section shall be reviewable by appeal to the Supreme Court of the United States."

Second, the explanation of proposed amendments states: "The amendment would apply to all litigation under the [Settlement] act and not just that involving the 1934 area." This language would appear to include actions brought, for example, under section 18 of the Settlement Act, 25 U.S.C. § 640d-17. The language of the proposed amendment, however, is confined to section 8. In any event, there is no more justification for bypassing normal appellate review in the cases involving the 1882 Reservation lands. Those cases are conventional lawsuits for damages, rental, equalization, and use; there is no need for an extraordinary right of direct appeal to the Supreme Court.

appellate review of the district court's judgment in Sidney v. MacDonald would be available in the Ninth Circuit Court of Appeals, with the right to petition for a writ of certiorari from the United States Supreme Court. The BIA and the Commission state that the proposed amendment would "expedite a judicial decision . . . without affecting the substantive rights of the tribes." The Hopi Tribe doubts, however, that the proposed amendment would in fact have this effect.

First, the Hopi Tribe questions whether the proposed change would in fact expedite resolution of Sidney v. MacDonald. For example, it is not clear whether the Supreme Court's jurisdiction would extend to interlocutory, as well as final, appeals. If further interlocutory appeals are filed (there have already been three), a dispute could easily arise over what court should hear the matter, delaying resolution of the substantive controversy.

Second, this Committee must be aware of the tremendous caseload of the United States Supreme Court. The Court can fully review less than 200 of the 5,000 cases in which review is sought each year. In the vast majority of those 5,000 cases, the Court has discretion

whether to review the judgment of the lower court on the merits, that is, to grant or to deny certiorari. Congress, however, has determined that a limited number of cases are sufficiently important that the Supreme Court must review them on the merits. The BIA and the Commission propose that Sidney v. MacDonald be included among such cases.

The Supreme Court, however, does not have time to allow full briefing on the merits and oral argument in all of the cases which Congress requires it to review. It routinely summarily affirms judgments on appeal from federal courts. As a practical matter, the Supreme Court exercises discretion with respect to review of cases on both its certiorari and mandatory dockets. The Hopi Tribe believes that it is unlikely that the Supreme Court would fully review Sidney v. MacDonald; although the issues presented in Sidney v. MacDonald are extremely important to the Hopi and Navajo tribes, they have little bearing on any other case. The Committee should note that the Court summarily affirmed the three-judge district court's judgment in Healing v. Jones, a case on the Court's mandatory docket.*/

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*/ In response to the Supreme Court's workload, Congress has in recent years repealed or narrowed many of the [continued]

In effect, then, the Administration's proposal may eliminate appellate review in Sidney v. MacDonald. Sidney v. MacDonald is a very important case, the speedy resolution of which is desired by both the Administration and the Hopi Tribe. It is not, however, the only important case before the federal courts. Other federal cases, involving fundamental civil rights and critical economic issues, are subjected to appellate review, despite the desirability of expeditious resolution. The Hopi Tribe sees no justification for departing from the usual rules of federal court jurisdiction which Congress has established.

B. Repealing Relocation Authority in the 1934 Area

Section 3(b) of the proposed Administration amendments would undermine Hopi rights by repealing legislative authority to relocate tribal members from lands eventually included in the Hopi Reservation as a result of Sidney v. MacDonald. The Administration seeks to justify its proposal on the ground that such authority

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statutes providing for mandatory review by the Court. For example, Congress substantially restricted the jurisdiction of three-judge district courts, whose judgments are directly appealable to the Supreme Court. The Administration's proposal runs counter to this trend.

should be subject to "further consideration by the Congress and the Administration."

The Administration offers no reason, however, why the provision must first be repealed in order to reconsider it. Furthermore, no "reconsideration" or analysis is offered by the Administration -- only an unsupported proposal for repeal. The Hopi Tribe can see no reason why such an extraordinary step should be taken now, in the context of a bill to authorize continued funding for relocation from the 1882 Reservation. As the BIA and the Commission note in their letter at page 2, the respective rights of the two tribes in the 1934 area have yet to be determined. There is absolutely no need for Congress to act summarily in a vacuum, before the extent of any potential relocation can be known. Congress may, if it deems necessary, "reconsider" relocation when the actual scope of the problem is apparent.

This proposal is especially ominous when coupled with the suggestion that restrictions on development in the "Bennett Freeze" area west of the 1882 Reservation be lifted at the pleasure of the Secretary. Time and again the Hopi Tribe has seen its rights eroded by the process of Navajo entrenchment and government inaction or acquiescence. Repealing relocation authority for the 1934 Reservation now would simply invite the Navajo Tribe and

its members to repeat the process once again, and send a clear signal that once the Navajo have entrenched themselves they will not be removed.

Relocation proved to be the only means available to secure Hopi rights to use their own lands within the 1882 Reservation. Repeal of relocation authority in the 1934 area will be read by some as an open invitation to ignore the district court's decree and frustrate the final opportunity for the Hopi to exercise their legal rights. It would also substantially undermine the Hopi Tribe's ability to negotiate a bilateral solution to any resettlement problem that may result from Sidney v. MacDonald. At the very least, the Administration's proposal is premature.

If the Administration is truly interested in an early completion of the relocation process, this proposal is ill-considered. Repeal of any portion of the authority to relocate will certainly encourage those within the 1882 Reservation who are determined to delay, resist, and equivocate in the hope that eventually Congress will repeal all relocation. Why, we wonder, is the Relocation Commission advocating unnecessary action by Congress which will inevitably make the task of relocation longer and more difficult? Why should Congress now signal that it lacks the will to carry through on its prior commitment to see the legal rights of the Hopi Tribe realized?

For all these reasons, the Hopi Tribe strongly opposes the Administration's proposal. There is simply no reason for Congress to consider repeal in this precipitate, ill-considered, and premature fashion. The Administration offers no basis for its proposal, nor any reason for introducing it at this juncture.

The courts have determined that the 1934 Act vested Hopi rights in the reservation it created. The extent of those rights are now being litigated. When it directed the Hopi Tribe to the courts in 1974, Congress recognized that unenforceable rights are meaningless. Accepting the responsibility for its own failure as trustee to protect the Hopi from Navajo incursion for a century or more, the federal government finally took on the burden of providing a remedy. The Administration appears ready to abdicate this recently assumed responsibility and throw in the towel. The Hopi Tribe hopes that this Committee and the Congress will prove more resolute.

C. Relaxing Restrictions on Development

Section 3(C) of the Administration amendments would eliminate the present requirement of mutual tribal consent for new construction in the Bennett Freeze Area and would allow the Secretary of the Interior to approve

such new construction in the interest of "health, safety, or general welfare." This proposal is similar to a provision proposed by Senator McCain, about which the Hopi Tribe previously has expressed its views. In brief, the Hopi Tribe opposes this proposal because (1) the reasons behind the statutory freeze have not changed, (2) Sidney v. MacDonald appears to be heading for an early resolution, (3) the Hopi Tribe is willing to discuss solutions to genuine health and safety problems in the Bennett Freeze Area, (4) earlier administrative "override" provisions resulted in routine approval of almost all projects submitted by the Navajo Tribe, and (5) the proposal would interfere with the equitable power of the district court to preserve the status quo of disputed land pending its judgment in Sidney v. MacDonald.

Any change in the current restrictions on development in the Bennett Freeze area should be deferred at least until the district court in Sidney v. MacDonald has entered an initial decree dividing the interests of the tribes. Relaxing these restrictions at this late stage of the litigation would seriously threaten the ability of the Hopi Tribe to secure its rights by opening the door to further Navajo entrenchment in the area most likely to be added to the Hopi Reservation, with all the attendant problems so clearly manifested inside the 1882 Reservation over the last ten years.

Section 3(A) of the proposed amendments would defer relaxation of development restrictions until an initial decree of partition is issued in Sidney v. MacDonald. After the initial decree, the Secretary would be authorized to approve written requests for new construction on the basis of need, but such authority would extend only to requests by a tribe or its members for construction within the area adjudicated to that tribe by the district court. The development restrictions would lapse after all rights of appeal have been exhausted.

4. Termination of Support for Litigation

Senator McCain's proposed amendments to S. 1236, with the support of the Navajo Tribe, also would terminate or reduce federal funding for litigation under the Settlement Act. The Hopi Tribe already has expressed its strong opposition to that proposal and has explained the reasons for the tribe's position. The tribe's reasons apply as well to the Administration's advocacy of the proposal. The proposed amendment chiefly would have the effect of greatly improving the Navajo Tribe's otherwise poor likelihood of prevailing, simply by enabling the Navajos to deplete the Hopis' meager financial resources in an uneven war of attrition. As Judge Carroll recently

observed, "the cases speak of it repeatedly, that there has never been a benefit to the Navajos to resolve these cases. That is true today. It will be true four years from now. . . ." Transcript of March 21, 1988 Status Hearings at 27:24 to 28:2.

If the purpose of the new language is to expedite resolution of the litigations, we wish to point out to the Committee that the Hopi Tribe has already taken significant steps in that direction. At a status conference requested by the tribe and held on March 21, 1988, Judge Carroll has indicated that he will set Sidney v. MacDonald for trial in 1989, and that he will also set the remaining Settlement Act cases at various times in 1988 and 1989. See the Hopi Proposed Schedule for Expedited Trial and Resolution of Pending Motions, attached as Appendix A.

Finally, there is no need to modify the statutory language to add that the attorneys' fees be "clearly justified and reasonable." Section 29 of the Settlement Act, 25 U.S.C § 640d-27(a), already contains provision for secretarial determination of reasonableness.

5. Rental Payments

The provision permitting the Secretary to make rental payments on behalf of a tribe, if the tribe fails to do so, is an excellent idea and needs to be expanded. As the law now stands, the Hopi Tribe has the right to execute final judgment against Navajo assets. Proposed subsection 15(c) will shorten the process of execution, but it will not prevent the Navajo from continuing to delay the entry of final, non-appealable judgments for rental payments.

Proposed subsection 15(c) should specify that if a tribe fails to make payment, the Secretary shall do so within thirty days after written request. The Secretary's authority should be mandatory and not permissive. In addition, the provision should state that the Secretary's obligation to make payment arises immediately after the BIA's rental determination and is not dependent on the completion of federal court review. The Navajo Tribe should not be prevented from appealing the decisions; but payment should be made before final adjudication (which, in all likelihood, will involve an appeal to the Ninth Circuit). If, after federal court review, the Secretary has overpaid, he has various ways to accomplish a setoff. This subsection also should specifically address

prejudgment interest, which should run at six percent from December 31 of each rental year, to compensate the Hopi Tribe for the Navajos' unjustified failure to make rental payments due under the Settlement Act. As to the prohibition in proposed subsection 15(d) against using tribal funds appropriated under a contract or agreement, this provision should be eliminated so that the Hopi Tribe may be compensated from any Navajo funds. A Hopi proposed amendment concerning rental payments is included in Appendix A.

6. Amendment of 25 U.S.C. § 640d-18(a)(3)

The proposed amendments attempt to obtain legislatively what the United States could not obtain judicially, to diminish Judge Carroll's jurisdiction, and to interject Congress into pending litigation. In Sidney v. Navajo Indian Tribe, Civ. No. 76-934, The Hopi Tribe has sued the Navajo Tribe and the United States, under subsection 18(a)(3) of the Settlement Act, seeking compensation for damage to the former Joint Use Area ("JUA"). The United States moved to dismiss the action, in part, on the ground that subsection 18(a)(3) does not authorize the Hopi Tribe to recover compensation from the United States for damage to the JUA. That is the same interpretation of subsection 18(a)(3) that the BIA and the

Commission now propose. In denying the United States' motion in 1984, Judge Carroll rejected that interpretation of subsection 18(a)(3). Nevertheless, the United States has resurrected this argument in a motion that is pending before Judge Carroll and again with the proposed amendment. Further, the proper interpretation of subsection 6(d) of the Settlement Act also currently is pending before Judge Carroll; congressional interference with his consideration would be inappropriate.

The proposed amendments may create additional litigation between the Hopi Tribe and the United States. By retroactively divesting the Hopi Tribe of its claim under the Settlement Act, the proposed amendment would create a separate claim by the Hopi Tribe under the Fifth Amendment to the Constitution for a taking of property without compensation. Congressional interference in pending litigation also may violate the separation of powers principle embodied in the Constitution.

The proposed amendments would revise, not "clarify," the Settlement Act. The language of subsection 18(a)(3) plainly allows the Hopi Tribe to seek compensation from the United States for damage to the JUA. The legislative history of the Settlement Act confirms that Congress intended the Hopi Tribe to have a claim against the United States for damage to the JUA. Congress repeatedly

recognized that the United States was responsible for allowing the Navajo Tribe to overgraze the JUA, which caused severe damage to the land.

Finally, proposed section 8 would place the government in the position of saying one thing here and something else, altogether inconsistent, elsewhere. In the Hopi Tribe's actions in the Claims Court against the United States for failing to enforce its own grazing regulations, the United States has argued that the action authorized by section 18(a)(3) "duplicates" the tribe's Claims Court actions and requires their dismissal under 28 U.S.C. § 1500. It is difficult to imagine a more unfair position: the United States seeks dismissal of the Hopi Tribe's Claims Court actions on the basis of "duplication" by a claim that the Administration, in section 8, now seeks retroactively to eliminate.

APPENDIX A

Hopi Proposed Schedule for Expedited Trial and Resolution of Pending Motions

On March 21, 1988, Judge Carroll held a status hearing in each of the pending cases among the Hopi Tribe, the Navajo Nation, and the United States. At that hearing, the Hopi Tribe presented its schedule for resolution of the litigations, which would set early trial dates, withdraw several pending motions for summary judgment, and seek to resolve differences out of court where possible. We anticipate that Judge Carroll soon will set pre-trial schedules and trial dates in many of the matters. The Hopi schedule is as follows:

1. Hopi Tribe v. Navajo Tribe, Civ. No. 85-801, and MacDonald v. Hodel, Civ. No. 87-1966: The HPL Rental Cases

   The Hopi Tribe seeks final resolution of the Navajo-initiated judicial review of the Secretary's 1978-1984 grazing and homesite rental determinations in the summer of 1988.

2. Hopi Tribe v. Hodel, Civ. No. 82-272: The Grazing Control Case

   The Hopi Tribe is working closely with the Bureau of Indian Affairs to develop a Hopi grazing ordinance for the Hopi Reservation and expects to seek dismissal without prejudice of Civ. No. 82-272.

3. Sidney v. MacDonald, Civ. No. 74-842: The 1934 Act Case

The Hopi Tribe requested expedited decision of this case, suggested that trial proceed while reserving decision on the question of the Paiutes' status until later, and requested a March 1989 trial date.

4. Sidney v. MacDonald, Civ. No. 76-935: The JUA Accounting Case

The Hopi Tribe seeks a trial in March 1989.

5. Sidney v. Navajo Tribe, Civ. No. 76-936: The JUA Use Case

The Hopi Tribe has requested an expedited ruling on its pending motion for partial summary judgment and that trial be set for May 1989.

6. Sidney v. Navajo Tribe, Civ. No. 76-934: The JUA Damage Case

The Hopi Tribe has offered to withdraw its pending motion for partial summary judgment (except as to the question of pre-1958 damages) and has requested that trial be scheduled for late 1989 or early 1990.

7. Sidney v. MacDonald, Civ. No. 58-579: The Equalization Case

The Hopi Tribe has offered to withdraw its pending motion for partial summary judgment and that trial be scheduled for late 1989 or early 1990.

8. Navajo Nation v. Hodel, Civ. No. 86-912, Benally v. Hodel, Civ. No. 86-873, and Manybeads v. United States, Civ. No. 88-410: The Navajo Relocation Challenges

Counsel for the Navajo Nation has indicated that he is considering dismissing Navajo Nation v. Hodel. The United States has asked that the court dismiss Benally v. Hodel and Manybeads v. United States.

Navajo Tribe's Written Comments Regarding the Administration's Proposed Amendments to Senate Bill 1236

April 12, 1988

These comments are keyed to the sections of the draft letter to Senator Inouye from Commissioner Atkinson and Assistant Secretary Swimmer dated March 7, 1988 and the proposed amendments attached hereto.

1. Housing and Bonus Payments

The proposed appropriation, which supposedly "represents the approximate costs of the completion of the Relocation Program" allows $53,333.33 to relocate each remaining family that the Commission states is eligible for benefits. Even if there were only 1500 families remaining who are eligible for benefits, which the Tribe disputes, the appropriation requested would not be adequate.

Based on NHIRC's own figures, it takes more than $120,000.00 to relocate each family. That figure does not include the costs that are presently passed on to the Navajo Nation, other federal agencies, state and local governments, or the relocatees themselves. (We have investigated the real costs of relocation, and believe they are much higher. We are presently attempting to quantify them.) Using the Commission's figures, however, the total cost of the relocation program will be at least $180,000,000.

2. Discretionary Funds

The flexibility provided by a large amount of discretionary funding may be necessary in a program which routinely needs to deal with the unexpected. However, we do not feel that the Relocation Commission as presently constituted should be allowed to expend large amounts of money without the review provided by other agencies under the present cost-sharing arrangement.

3. Expedited Judicial Process

If the 1934 Reservation dispute is to be resolved by litigation, then an adequate amount of time for thorough litigation and careful consideration must be provided. We believe a negotiated or, if necessary, legislated comprehensive settlement is a less costly way to resolve the dispute.

4. One-acre Homesite Lease

The proposed one-acre homesite lease, with no accompanying benefits or land use privileges, is totally unacceptable. It does not even begin to meet the needs of those who must remain on the HPL (or those on land eventually awarded to the other tribe

in the 1934 Area). The proposal would leave those people with no services, no water, no grazing or farming land, and no way of earning a living. Moreover, the narrow qualifications for eligibility may exclude many, if not most, legitimate HPL residents. Implementation of those qualifications would create a class of homeless, displaced Navajo families when those we do not meet the criteria are expelled from the HPL.

5. Lump Sum Cash Payment

The proposed $40,000 cash payment is not sufficient to enable a family to reestablish itself elsewhere. We fear that the prospect of instant cash might lure some unwary Navajo families into relinquishing their right to resettlement in an area with jobs, services, and the necessities of modern life.

6. Rehabilitation Fund

We support establishment of a rehabilitation fund that will eventually derive from Paragon Ranch coal income, but we oppose the interest payments on amounts that might be appropriated by Congress to that fund. It will probably be ten years or more before substantial revenues are received from the Paragon Ranch coal, during which time interest charges would mount exorbitantly.

7. Federal Payment of Attorneys Fees

As previously stated, we believe that federal support for litigation of the 1882 and 1934 cases should be eliminated immediately.

8. Payment of Rents from Tribal Trust Funds

We strongly object to the use of tribal trust funds to make rental payments to the Hopi Tribe. Those funds are managed by the BIA for the benefit of tribal members and are dedicated to specific purposes. For the BIA to suggest that they be taken from those beneficiaries and used for other purposes is not the action of a responsible trustee. For Congress to accede to such a suggestion would be a dangerous precedent.

The Navajo Tribe has made a good faith payment of almost $460,000 as rent to the Hopi Tribe. We are presently appealing the BIA's exorbitant rental determinations to the extent they exceed what our appraisers tell us we owe. Based on our past actions, there is no reason to believe that we will not meet our obligations when they are finally determined. Congress should not approve an invasion of trust resources unless some need to do so has been shown.

Conclusion

We oppose the self-serving and inadequate proposals put forth by the Administration. The proposals further illustrate the need to restructure the federal agencies responsible for relocation, as Senator McCain has proposed. Only with a significant change in structure and personnel, and eventually with substantive changes in the law, can the hardships suffered by Navajos under the relocation law be adequately alleviated.

ADDITIONAL TRIBAL STATEMENTS

THE NAVAJO NATION

PETER MACDONALD
CHAIRMAN

JOHNNY R. THOMPSON
VICE CHAIRMAN

SUPPLEMENTAL TESTIMONY OF THE NAVAJO NATION

ON S.1236

(Reauthorization of the Navajo-Hopi Indian Relocation Commission)

FOR THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

* * *

April 22, 1988

The Navajo Nation submits this written testimony as a supplement to the testimony submitted by Navajo Tribal Council Chairman Peter MacDonald, Sr., at the April 12, 1988 hearing of the Senate Select Committee on Indian Affairs on S.1236.

This supplemental testimony rebuts several inaccurate statements made before the Committee by other witnesses, and also addresses two serious errors and misrepresentations in the amendments proposed by the BIA and the NHIRC.

1.

Evictions from the HPL

Several comments were made at the April 12 hearing concerning the benevolence of the Hopi Tribe for not seeking to evict the Navajo families who continue to reside on the Hopi Partitioned Lands (HPL). The fact is that the Hopis have not evicted Navajo families because to do so would be illegal.

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Congress has repeatedly stated that there would be no evictions of anyone residing on that portion of land partitioned to the tribe of which they are not members until such time as those residents have been provided a relocation home by the NHIRC. This language was included in the fiscal year 86 and 1987 appropriations acts, prohibiting the use of any federal funds for such purposes.

Additionally, the relocation program authorized by P.L. 93-531 is less than half complete. Until such time as the NHIRC has completed its responsibilities under the Settlement Act, any action by the Hopi Tribe or anyone else to evict the remaining Navajos will not have matured. Only when the NHIRC has completed the relocation program will a court of competent jurisdiction entertain an action to evict any remaining residents.

2.

Federal Liability in Litigation; Proposed Impoundment of Trust Funds

The Administration proposes in Section 8 of its latest amendments to change the provisions of the 1974 Act regarding liability of the United States for damages to the former Joint Use Area. It suggests that those provisions need to be "clarified" because of the Tribes are using them to sue the United State and Congress did not intend to allow that. The argument that Congress did not intend to allow a claim against the United States for damages is completely unfounded. In the 1974 Act, Congress stated, "the United States may be joined as a party to [the damages] action and, in such case, the provision of sections 1346(a)(2) and 1505 of title 28, United States Code, shall not be applicable to such action." 25 U.S.C. §640d-17(a)(3). It also stated:

> [t]he Federal Government shall pay any difference between the value of the particular land involved in its existing state and the value of such land in a fully restored state which results from damage to the land which the District Court finds attributable to [breach of the trust relationship].

25 U.S.C. §640d-5(d). Congress thus waived the United States is sovereign immunity and provided for adjudication of a claim against the United States.

The Administration now proposes that federal liability be eliminated under the subterfuge of "clarifying" the Act. The Administration's arguments about the meaning of the Act are currently being considered by the District Court in Arizona. Unless Congress is prepared comprehensively to resolve the lawsuits in a fair manner, they should be left to the District Court for resolution. It would be unfair for Congress, after providing a claim in the 1974 Act, to relieve the United States of liability under that Act at this late date.

The Administration again displays its unwillingness to act as a responsible trustee by suggesting that Congress eliminate legal claims established in 1974 without compensation to the Tribes. Such an action would almost certainly give rise to a claim of an unconstitutional taking by the United States, thus increasing the litigation of this matter.

As stated in our written testimony submitted for the April 12 hearing, we also adamantly oppose the unprecedented request to impound tribal trust funds to pay judgments that may be entered in these cases.

3.

Administration Proposal to Make Relocatees Pay for Relocation

Section 5 of the Administration's proposed amendments offers a new twist in the BIA/NHIRC effort to evade responsibility for relocation: arrange for Congress to appropriate $10,000,000 a year for Fiscal Year 1989 through 1992 to fund infrastructure, community and economic development, and social services on the Chambers-Sanders lands ("the New Lands"), but then require the relocatees, through revenues received from the Paragon Ranch, to pay it all back to the federal government -- with interest.

This suggestion is an assault on Congressional intent, express and implied, with regard to responsibility to pay for the basic programs of relocation. Also, it is a backdoor attempt to deprive relocatees of the resources that Congress intended to be available to ameliorate long-term effects of relocation.

There may be merit in the idea of advancing the $10 million per annum for impact mitigation, but there are three basic misconceptions being advanced in the letter of explanation from the BIA/NHIRC:

1. There appears to be an assumption that any revenues derived from relocatee lands should be available to fulfill the obligations of the federal government rather than to supplement those benefits the United States is already obliged to provide.

2. It should be clarified that should there be no revenues or benefits of any significant measure from the relocatee lands, that neither the Navajo Nation nor the relocatees have any obligation to repay the United States from other sources.

3. We take vigorous exception to the assertion on pages 3-4 that the burden for benefits and services should be lifted from the federal treasury because of some imagined failure to anticipate the costs of relocation at the time of the enactment of P.L. 93-531. Congress was told in the clearest and most graphic terms in both 1974 and 1980 that the costs of relocation would greatly exceed the nominal costs that Senator Goldwater was positing. Congress chose in a clear and unequivocal manner to assume the full range of costs and was fully informed as to what they could be. While it is clear that any benefits from these lands and resources should accrue directly to the relocatees, there is practically no responsible position that would allow those benefits to flow to the United States -- the only clearly culpable party to this whole sorry scenario.

4.

NHIRC/BIA Undercount of Families

The NHIRC and the BIA persist in telling congress that there are only "50" or "75" resister families on the HPL; that most HPL residents are quite willing to leave; that relocation is more than half complete, so we may as well "finish it."

The Navajo Nation knows this to be false. The blandishments and easy assurances by the NHIRC and the BIA are designed to satisfy Congress that the program is well in hand and that completion is just around the corner.

The BIA and the NHIRC have consistently underestimated the number of Navajos living on the HPL. The inadequacy of their survey methods and the deep fear and suspicion that agency "counselors" have aroused among the residents are perhaps but two of the reasons for the misleading numbers the BIA and the NHIRC provide to the Congress.

Because the actual numbers of Navajos living on the Hopi Partitioned Lands has always been a matter of disagreement, the Navajo Nation this year began a systematic enumeration of all families living on those lands. This count is still in process, but has been completed for Teesto and Tolani Lake Chapters. We believe this is the most accurate census available for these areas. (See Exhibit I.)

Only those persons eighteen years of age or older are listed in the following count; minor children were counted in the raw data, but are not included here because they do not qualify for the relocation benefits on their own. This count is only of those who are, or who feel should be, eligible for benefits on their own. Our list is broken down by domicile status and relocation status.

We wanted to list first those who are full-time HPL residents. These are household heads who almost certainly qualify for relocation benefits, if they have not already been certified. The second class are those we consider domiciled on the HPL, adults who live there part-time, or are temporarily away for work, schooling, or military service. These are people who consider the HPL their home, and would be left homeless if their relatives relocated.

Relocation status crosscuts domicile classification to some degree. A considerable number of people -- 56 in Teesto and Tolani Lake Chapters -- are certified for relocation but have never gotten their benefits; some of them may no longer wish to relocate. There are 15 families which relocated but lost their homes and returned to the HPL. Of the 83 families which have never applied for relocation, many will only leave the HPL at the point of a gun.

We would like to call your attention to the claims of the BIA and the NHIRC that fewer than 200 families remain on the entire HPL, that all but 23 of these have applied for relocation benefits and that perhaps all but 50 will relocate. We found 90 families which were full-time residents of the HPL in Teesto alone; including those temporarily away, the figure was over 200 families in that chapter. There are ten other chapters in the HPL. In all of them, there are fare more people than BIA and the Relocation Commission would have you believe.

We thank the Committee for its willingness to receive our comments, and welcome any further inquiry from the Committee on these and related matters.

STATEMENT OF THE NAVAJO-HOPI DEVELOPMENT OFFICE:

SOME EXAMPLES OF ADMINISTRATIVE INCOMPETENCE
IN MANAGING THE FEDERAL RELOCATION PROGRAM

This is a brief chronological statement outlining some of the numerous instances of incompetence and mismanagement on the part of the Relocation Commission and the Bureau of Indian Affairs in implementing the relocation program. We feel that there is something seriously wrong with these agencies, and that only a complete housecleaning will enable them to meet the terms of Public Law 93-531 as amended. We also feel that the role of a reconstituted Relocation Commission should be to give Congress sound policy advice on how to resolve the so-called "land dispute," advice which neither BIA nor NHIRC is at present competent to give. More detailed information and documentation of the following statement can be found in the Supplemental Testimony of the Navajo Nation submitted to the Senate Select Committee on Indian Affairs, January 15, 1988.

During the 1985 House Appropriations Committee hearings which led ultimately to the enactment of Public Law 99-100, Congressman Sidney Yates stated that NHIRC had "botched the job." What he meant by this was his exasperation at that agency's consistent record of failure to implement the Relocation program and its internal disarray.

Congressman Yates had seen the "pink plan," an eight-page document submitted by NHIRC as the end result of two years of and well over $200,000.00 spent on planning. It was basically a statement of NHIRC's intent to somehow wish into existence the roads, streets, sights-of-way, and all other things necessary to turn the "New Lands" ranches into a subdivision for relocated Navajos.

The "pink plan" was the summation of the Commission's entire planning output. Along the way to producing it, however, NHIRC commissioned, circulated, and took comments on a draft general plan for the "New Lands." It was this general plan, which NHIRC inexplicably scrapped, which contained the original promise of 100 sheep units for each relocatee family moving to the "New Lands."

Meanwhile, the Commission's earlier refusal to take responsibility for the performance of its housing contractors was beginning to cost more and more money as shoddy relocation houses began literally coming unglued.

NHIRC was in internal disarray at this time. The Commissioners had fired their executive director in June and had asked their planning contractor to remove its planners from the

project work force. The Inspector General's office was investigating NHIRC for unfair labor practices; three female staff members were awarded compensation to settle these complaints. An upper administrative employee was being sued for assault by a female staff member.

NHIRC administrators have made numerous erratic public statements. One Commissioner is well remembered for his assertions that there were wells on the "New Lands" producing thousands of gallons per minute; for his suggestion that the relocatees raise catfish for a living; and for proposing a subdivision inspired by values from the white world and lacking only a golf course to make it complete.

On the HPL, Navajos had been thrown into consternation at the mysterious statements by upper-level Commission staff that the "deadline for voluntary relocation" had passed on July &, 1985. Did this mean that there would now be forced relocation? When asked what they meant by their statements, NHIRC representatives would say "we don't know."

Congress felt that the Relocation Program needed to be redirected. Accordingly, it brought in the BIA. Assistant Secretary Swimmer took a personal hand in reviewing NHIRC's work to that date (early 1986) and established a "task force" to get the program moving.

The first priority under BIA's new regime was speed. All other concerns -- technical, human, and institutional -- were subordinated to the goal of moving people as fast as possible. It was decided to take a "plan as you go" approach to development. Existing ranch fencelines became boundaries of new range units, whether they were appropriate or not; range managers decided where communities would be sited. A road network was laid out to provide access to this ill-chosen mix of subdivision sites and grazing areas. Contracts were let to drill for domestic water supplies before any determination had been made that the sites were suitable for habitation.; as it turned out, two of them flooded the next year, and BIA is has yet to get right of way over private land to two more.

At the same time , range managers from BIA's Phoenix Area Office combed the HPL recruiting families for the so-called pilot project. This effort entailed home visits by BIA range managers -- the same persons who had been impounding Navajo livestock for years -- to HPL residents, offering them special, go-to-the-front-of-the-line deals on "New Lands" relocation before any land use regulations or eligibility criteria had been written for the "New Lands." The "road to nowhere" and the "quarter million dollar house" were built for the single individual who responded to BIA's blandishments, and who then refused to relocate under the terms he was finally offered. BIA subsequently disguised its

blunder by designating the area around the terminus of the road to nowhere as a subdivision, and calling the quarter million dollar house a "model home."

Meanwhile BIA/NHIRC rejected any and all suggestions that it engage in comprehensive planning for the "New Lands." These agencies were, however, forced to reorganize when after six months, they discovered that they were offering different, competing benefit packages under different eligibility criteria. Inconsistencies were resolved in the direction of reduced benefits and tighter eligibility.

After reorganization and a change in its on-scene leadership, BIA/NHIRC began developing the "New Lands" piecemeal, having to redo much of their work as they discovered how hard it is to build something without plans. This random development continues today, over the objections of the Navajo Tribe on whose trust land it is taking place.

BIA/NHIRC has been a poor steward of "New Lands" resources. Locals report the area's former herds of deer and trophy-size pronghorns have been decimated by poachers who gain access through unlocked gates and breaks in fences. There have been numerous instances of illegal wood cutting, pot hunting at prehistoric sites, trapping, and outright squatting by non-relocatees.

The "New Lands" are now crisscrossed by the scars left by road and utility development. BIA/NHIRC has taken advantage of the waivers of trust land right-of-way regulations granted for this project to finesse the requirements that it restore damaged land.

At the same time as it profligately wastes or ruins tribal resources, BIA threatens relocatee families for "resource violations." Relocatee family members have had their livestock seized and have been fired from their government jobs for violating obscure sections of the "New Lands" grazing regulations. One family is acing felony charges for salvaging building material from a ruined ranch house.

Meanwhile NHIRC is negotiating against tribal wishes to locate a school at a busy freeway interchange within walking distance of one of the most notorious hangouts for alcoholics, transients, and drifters in the "New Lands" area.

BIA/NHIRC claim to be "pursuing economic development" but will not tell us who they are talking to, or how they plan to accommodate these employers with sites and services. At the same time they are in the process of preempting a prime commercial industrial location as a thoroughly inappropriate site for a school.

Ask BIA today who is in charge on the "New Lands." Assistant Navajo Area Director George Gover, BIA's man in charge on the scene recently publicly denied any but an oversight role for his agency. This was news to NHIRC's staff members at the same meeting, who still attend meetings where BIA calls the shots.

We feel that by any reasonavble standards BIA and NHIRC have demonstrated their institutional bias against sound management and planning, irresponsibility and poor stewardship in implementing their mandate, and insensitivity toward the people whom they should regard as clients. Until major, sweeping changes occur at NHIRC, and as long as BIA takes an active role in the Relocation Program, Congress will have to continue hearing about these kinds of problems.

COMMENTS
on the
BIA AND RELOCATION COMMISSION
PROPOSED
AMENDMENTS TO SENATE BILL 1236

NAVAJO STATEMENTS FROM TRIBAL FIELD HEARINGS
APRIL 4 AND 5, 1988

Agencies of the Navajo Tribe, the Navajo-Hopi Development Office and the Navajo-Hopi Land Commission, received copies of amendments to Senate Bill 1236 prepared jointly by the BIA and the Relocation Commission. These tribal agencies promptly called two public hearings which would enable families affected by the Relocation Act to respond to the joint proposals prepared by the BIA and the Relocation Commission. In addition, four other community meetings were held in the affected area.

The following are excerpts of statements made by speakers attending these meetings.

I. THE McCAIN AMENDMENTS

"I heard about the McCain Amendments. I hope they will be implemented. I heard about the proposals regarding the three commissioners. I support the McCain amendments. Let the Commissioners leave. They didn't do things to help us. They've mislead us and lied, and this causes us to disagree among ourselves. Often they don't seem to hear a word we say." (Harry Nez)

"Unfreeze the Statutory Freeze and reduce attorney expenses." (A. McCabe)

"I support the McCain Amendments. The McCain bill needs to happen." (David Herbert)

"We favor the McCain Amendments. The land may have been put in the Hopi's name but we have lived here since the whiteman was still overseas. Please tell Congress this." (Mr. Benally at Big Mountain)

II. THE REAUTHORIZATION OF THE TWO RELOCATION AGENCIES, THE RELOCATION COMMISSION AND THE BIA

"I agree with the removal of the BIA, they are just asking for funding to relocate us for their own job security. They receive a lot of money. On the $80 million I don't think it'll all be implemented to do the housing. I think the Commission itself may use a good portion of it." (H. Nez)

"BIA should not be involved. We want administrators who are fair. We don't want someone who works against us. That's how I think of it." (A. McCabe)

"We want a humanitarian commissioner that understands us rather than that try to strike fear into us, causing older people to die heartbroken, this has happened to many young people as well." (identity not disclosed)

"We never elected the Relocation Commission." (Katheryn Smith)

III. THE ONE-ACRE HOMESITE LEASE

"This one acre homesite lease is preposterous. We're already in prison because of the fences all around us. I have some cattle and it's my only means of livelihood. If they want to do this (limit families to 1 acre homesite leases) they might as well kill us instantly with one explosion, like a bomb. If this one-acre is approved or if we have to relocate where are we going to move to? I don't like the Relocation Commission and BIA proposals." (identity not disclosed)

"One acre isn't enough to survive. The Relocation Commissioners themselves couldn't survive on this, their annual income is way more than this." (A. Clinton)

"The one acre isn't enough." (speaker at Teesto)

"I signed up for relocation but was told that the time for signing up was over. Later I decided not to relocate. One acre isn't enough for me to live on. The Relocation Commission doesn't know what their plans are or what they intend to do." (speaker at Teesto)

"One acre isn't enough to live on. Also I won't agree with fencing. I didn't go to school and so I mainly depend on my livestock and my children depend upon me for their food and income. Through livestock I make a living for my family. To understand why one acre isn't enough, just look at the people who relocated, they came back without hope, poor and hungry ... I won't relocate. I want my children to come home. I'm willing to spend years in prison for it. I say the Hopis have all the privileges. (speaker at Teesto)

"I don't agree on this one-acre idea, saying it isn't ours and we would have to pay for it." (speaker at Teesto)

"The one acre homesite lease is out of the question. I'm a very large man and one acre isn't even enough for me." (H. Nez)

"One acre, that's not workable. My older sister will agree with me to say no to this, she is a medicine woman ... I am not moving." (Slim Biakeddy)

"On this one acre proposal, if someone dies on the land there won't be enough room to move (away from the contaminated place). I am concerned about this because so many of our elders have died. I myself don't want to relocate. I'll be here with my Mother (earth) and that's how I think of it, here with my children. We have our religion, our sacred arrowheads and corn pollen and prayers. Why should I go against that? If I go somewhere else I will miss this. The older people say they will be here. My mother says the same. She knows this area well, so even though she is going blind she can get around. She wouldn't know these things in a new area."

"I don't want to move. There is a personal relationship between myself and the Mother Earth, the ground. I know the ground, the earth, the environment, and the earth knows me. If I were to live elsewhere, I would be alienated and would not live too long. The $40,000.00 is not enough to replace a livelihood needed to survive and live in dignity." (Asdzaan Bedonnie)

"We don't want one acre. There wouldn't be enough water or wood, no place to collect food or raise sheep. It would be like being jailed, with your children taken away" (because they could not live on the HPL). (Oscar Whitehair)

"The one acre proposal is not good for us. It has made life hard for us. It is as though we are being offered a sip of water during a drought." (Jane Biakeddy)

"One acre, if you have running water and electricity you can live on one acre. Maybe you can put a business or a store on one acre and have income, but us here, we have no money. The women here are not living in a town. One acre will not allow these women's children to have homes. The Hopis already live that way. They wouldn't see problems with this type of plan. we don't want it." (Lavina John)

IV. THE $40,000 BUY-OUT PROPOSAL

"Money is not the answer, we should not accept money. We should support a quick and comprehensive settlement." (Edith Billy)

"The Relocation Commission offer may be tempting to someone, but it doesn't taste good to me." (Harry Nez)

"On the money distribution, I don't intend to relocate. I have livestock. I compare the money with my livestock, by comparison my livestock will last a long time. We who live here (Big Mountain), we don't want our livestock taken away. The Relocation Commission came in to see me twice, We got in an argument the second time. The people at the New Lands are having the same problems we are having. They had livestock impounded. So staying here is best." (speaker at Mosquito Springs)

"Many relocation homes (on the reservation) seem to be empty, there are no occupants. You wonder if the people want their housing. The $40,000 cash buyout is really no good. Do people deserve only this handful of money?" (speaker at Mosquito Springs)

"The money, there's no way it would be possible. (to accept it)"
(Oscar Whitehair)

"The money is not enough. You can put money in your pocket, before you know it, it's gone." (Grace Goy)

"We don't want $40,000 or the one acre. Let that be made clear." (Katheryn Smith)

V. RELOCATION

"This land dispute has caused heartaches, headaches, and sickness. This makes it hard to have a family." (L. Bahe)

"I don't want to see the Administration proposal as the others have said. The 1934 people are also not moving."

"Before this law I had a horse to ride. I used to have livestock, turquoise and jewelry, but now all I have is my name and the clothes I wear. I don't want the Relocation Commission. People have asked them for things and the Commission doesn't try to advocate for them. We were told schools, clinics, and so forth were to be provided at the relocation area. We told Ross Swimmer we won't relocate, he shouldn't be saying we want to relocate. The Hopis have said we Navajo people just moved here recently. But Navajo people are made up of clans from many tribes. We were told by our elders that we are descendants of people who have been in this area since the eruption of the San Francisco Peaks. I am not moving anywhere else ...." (Mae Tso)

"This whole relocation law makes a person very upset."
(Louise Bahe)

"I've never applied for relocation benefits. I leave everything to the Creator and Mother Earth to answer and prepare our destiny, which we pray to be positive. Even if I were to move, I couldn't have a place to go, no alternative but to stay." (Mary Bahe)

"I asked the Relocation Commission about my daughter and was told there is no money for her. I said if there's no money, why not close up? Later I told them I was glad the relocation deadline had passed and thanked them for turning down my daughter for benefits because I believe we can make do without them." (Grace Goy)

"Those of us who left are not finding work. The relocatee houses are not made well. Also there are more problems when these things are done." (Lavina John)

"I oppose the one-acre homesite lease and paying rent. I support the McCain Amendments. I would recommend quarterly reports (to Congress). Us veterans, we sacrificed our lives to protect our country, which means our reservation. The hardships imposed by the relocation law have drastically affected our mental and emotional state. I want to ask Washington why were we asked to defend our country, then asked to relocate from the land?" (Glenmore Begay)

"I feel I have every right to live here because I defended this land." (Cecil Miles, Sr.)

"I agree with the McCain Amendments ... the Relocation Commission has only made our people suffer more, so I agree they should be replaced by a single member. I also agree that attorney's fees be ended. We need to end this now. How long are our people going to suffer?" (Betty Tso)

STATEMENT OF

CLARENCE AND MARY LOU BLACKROCK

Chairman Daniel Inouye, it gives my wife, Mary Lou Blackrock (C#4573) and myself the greatest honor to be in your presence. My name is Clarence Blackrock (C#46,275) and we are a life-time resident of what is now Hopi partition land.

Senators Inouye, DeConcini and McCain, we have in the past heard your names and without ever meeting you, we are aware of some of the good things you are trying to do for us and thousands of other families. As a matter of fact, we have voted for some of you.

Senators, we have traveled 2,000 miles to the east to be with you for a short period of time. More importantly, we also came to tell you who we are before you make any more decisions on our future.

My wife Mary Lou is 52 years old. I am 60 years old. We have been married for 36 years. We have nine children, ages 33 to 10 years and we have 10 grandchildren. My wife's mother, Clizzy T. Bitsi (C#5920) was born in 1909 and raised in Cactus Valley. Her (Clizzy's) father, like herself, was also born and raised there until he died in 1962 at the age of 103. Clizzy T. Bitsi's grandmother went on the infamous Long Walk when she was a girl.

After they were freed, she and her family returned to Cactus Valley to begin their livelihood again. I want you to see that we did not, as others would say, move into the area recently. Our roots go back hundreds of years.

Senators, we also would like for you to know that within the Report And Plan filed with Congress by the Relocation Commission in April, 1981, they attempted to list our family on page 39. Our oldest daughter and youngest son were never included on the list. The latest Relocation Commission computer list of March, 1988 lists myself but fails to list my four oldest children who now have children of their own. In essence, the Relocation Commission has decided that since 1981 to 1988 four of my children no longer reside with me and perhaps are not eligible for any benefits. This decision, of course, was done without any consultation with us nor our children.

My wife and I did not receive any formal education. Our livelihood is based entirely on land use. For example, before the government livestock reduction program of the 70s, we once had 200 sheep and goats, 6 horses and 20 cows for a total of 410 sheep units to survive on. We also had two cornfields, a total of four acres to plant and raise crops that we needed. Life was good then, with that many livestock and crops, it made me feel secure and happy. There was plenty for all of us and our neighbors.

Today, under the re-issued BIA permit we are entitled to only 40 sheep with one horse and two cows for a total of 72 sheep units. We also fear that if we continue to work the fields, we may be harassed. Therefore, we no longer have the four acres. Instead, we have a small garden next to our house. This is hardly enough to make a living particularly in light of the fact that the cost of living is so much higher than it was before the 1972 livestock reduction order.

Senators, of equal importance is the story behind our house which you should know. I indicated that my wife's mother is still alive at age 79. For a good part of her life she lived in a traditional hogan in Cactus Valley. When we got married and began to have our own children we could no longer continue to live with grandma in her hogan so in 1961 we built our house not far from grandma's. As the years went by, the hogan which grandma lived in became inadequate and because of her age she came in to live in our house. In August, 1986 a tragic mishap occurred. Our house burned down. We lost everything. Because our family was so large, they had to disperse and live with other neighbors in the area. The Navajo Tribe tried to assist us in rebuilding our house but it was taking too long and the weather was soon getting too cold for grandma. While the rest of the family continued to live in a shack covered by a tarp, we dismantled the old dilapidated hogan and replaced it with a small one-room cedar post house for grandma.

In early 1987 the Hopi Tribe made numerous trips to our residence and posted a notice of cease and dismantle on the two replacement structures. They (Hopi Tribe) argue that I have done something so wrong that it merits a lawsuit against me and the Navajo Tribe.

Senators, we also came to try to share with you how it feels to be forced into this unfortunate situation. Our culture and the teaching of our parents and grandparents taught us many elements to life. They taught us that these elements are strong, sacred and are to be valued. We try to pass these on to our children and teach them about these elements which include family, livestock, cornfield, home, land and religion.

After years of teaching our children these values, we find everything in our lives that meant anything reduced to only a dream. Our children, particularly those that are married with children of their own, yearn for a home of their own. The oldest (33) was only three years old when the first lawsuit was heard in the District Court. We were her age then. The last 30 years of our lives have been spent under this cloud of darkness and uncertainty. They want so much to be given that opportunity to live those elements of life and wish it could be done so in Cactus Valley. We hear them talking about their livelihood as if the United States government has impounded it and left no other options. As parents and grandparents we can only watch and witness their entire livelihood being terribly disrupted.

We want so much for this entire ordeal to end. It hurts to hear our own children talking about themselves in this manner. It hurts to see them frustrated and to see that they cannot have the opportunity to truly value those elements which we are all taught. We tried desperately to communicate our situation with the Commission and the Bureau of Indian Affairs. It seems like they have no desire to look at the situation from our point of view. My oldest (29) son, Steven told me several times that, as he stood on the highest point in Cactus Valley so many times and looked in all directions, he could not imagine that anywhere on this planet earth there is another place exactly like this one which could replace it. He says that God must have made us and the land for each other because our minds cannot allow us to think about any other place. It hurts so much to hear him say that, that I shed tears each time.

I am informed that the Relocation Commissioners and the Bureau of Indian Affairs have finally decided after all these years, how I and my children should live the rest of our lives. I am one of those people who refuse to relocate and as such I will be confined to a one-acre homesite with no improvements. How can I, after all these years of being taught the value of the various elements of life, survive under such conditions? How am I expected to complete my life while knowing that my children cannot and will not ever live with me again at Cactus Valley? While knowing my children never did receive their benefits but instead were forced to accept a $40,000.00 check.

Senators, I want to tell you that I do fully support those amendments offered by Senator John McCain. Earlier in my statement I discussed my family's frustration with this entire ordeal. Had it been someone else that was willing to understand our way of life, there would be less hardship. I would not be living in so much uncertainty. The Commissioners and the Bureau of Indian Affairs, because of their failure to listen and understand, have scarred perhaps the best years of our lives. Senator McCain you are a wise man to get rid of the Commissioners and the BIA and replace them with a single Commissioner who will redetermine who we are and at the same time gives us an opportunity to discuss with him our hardships. Perhaps he will serve as better ears and eyes for you. Perhaps he will even, if you allow him, suggest ways to end this whole ordeal.

Finally, I want you to know that my voice is not single. On Thursday (4/7/88) of last week, all of the affected families in Cactus Valley, Big Mountain, Teesto, Flagstaff (from relocated families), and Coalmine (Bennett-Freeze area) met to discuss these amendments. They selected us to pass on these messages to you. They even signed a petition to that effect which I want to submit for the record.

In closing, grandma and us are like old trees which still bear fruit, their roots have grown deep and are now one with its soil. If ever dug up and replanted elsewhere, they will no longer bear fruit.

They will soon die no matter how much water and other minerals you may give them.

May God bless you and help you to make the right decision. One that we can all look back to some day with a smile and pride. Thank you.

THE NAVAJO NATION

PETER MacDONALD, CHAIRMAN
THE NAVAJO TRIBAL COUNCIL
JOHNNY R. THOMPSON, VICE CHAIRMAN
THE NAVAJO TRIBAL COUNCIL

April 8, 1988

M E M O R A N D U M

To: Navajo-Hopi Development Office
Window Rock, Arizona

Fr:: Shirley Williams, Leupp Mental Health Office

Subj: Client Testimonies.

Attached are client testimonies, as gathered from my clients in Sandsprings, ARizona. Please take themmwith you to be given to Chairman Inouye. Thank you for your cooperation.

Post Office Box 308●Window Rock, Navajo Nation (ARIZONA)●(602) 871-4941

Leupp Mental Health Program
PO Box 2636
Flagstaff, ARizona 86003
April 7, 1988

Senator Inouye, Chairman
Senate Select Committee on Indian Affairs
UNITED STATES SENATE
Washington, DC 20510

Dear Mr. Chairman:

I live in the HPL in Sandsprings, Arizona with my family, and I like living here with them. I am a young mother of two and I cant relocate anyplace else where my family isnt around me. I worry about my parents because they are affected directly by the many plans people have made on their lives. I worry about what will happen to my babies when they grow up and start their families. Or will relocation terminate my family and my children will grow up not being able to alien to their own grandparents, aunts, uncles, cousins, etc? Because I experienced the strong family ties that holds me to my home and family, I want the same for my children, to they can know who they are, with strong identity (Navajo), and to be proud to be a Navajo. I wish for this type of strong mind and stable family relationships, and good health for my children, that they may be able to continue family lineage for me and my family. With relocation none of this is possible, and will only break my children's mind and soul.
I have no place to relocate to, because my parents are both living in HPL, and thats where I'll stay with them.
Thank you for your understanding my wish for my children, I appreicate it alot.

From,
Marjorie Manygoats
Marjorie Manygoats

zx: file.
client.
NH Task Force.

Leupp Mental Health Office
PO Box 2636
Flagstaff, Arizona 86003
April 7, 1988

Senator D. Inouye, Chairman
Senate Select Committee on Indian Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I live in the HPL in Sandsprings, ARizona, with my family. To me one acre isnt large enough to hold a house and a hogan. I feel like Congress doesnt want us to live, and should just elimenate us altogether instead of trying to plan something we dont want, or agree to. I am talking about the NHIRC and BIA amendment to force me to live on one acre homesite without livestock, or relocate for $40,000.
In 1864, Navajos were treated cruelly on the long walk, and many died trying to get to Bosque Redondo, and many died there, and more died coming home, from the Long Walk. Once they were released from captivity in the concentration camps, they were told that they would never be treated this inhuman ever again. but this has happened with the relocation again, with the Navajo being forced against their wills, so they may die from the suffering. Many people died in the Long Walk process, and many have already died of broken hearts in the relocation process today.
Please stop gambling with our lives? What we want is to stay where we belong, with our livestock, and farms. This is the only life we know, and to relocate us elsewhere really has no purpose in our lives, and we would never make it there. Please consider my situation and want to stay on my land. Thank you very much for your understanding.

From,
Lena B. Begay

zx: file.
client
NTask Force.

Leupp Mental HEalth Office
PO Box 2636
Flagstaff, ARizona 86003
April 8, 1988

Senator D. Inouye, Chairman
Senate Select Committee on Indian Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I am fieldworker in the southern part of HPL, and the people I work with live in Sandsprings, ARizona, forthe past five years, under the Navajo Tribal Mental Health Program. When I first started Mental health work in 198[illegible], I was just out of school and very enthusiastic about working with myown community. Today, I am very tired, depress, sad, worried and overworked. I worry constantly about my clients, their living conditions, their problems, their daily alert to having impoundment problems, and alert to more harassment from the Hopi Rangers. Every night I think of what I can do to alleviate the suffering the clients go through on a 24 hour basis. I know the intent is to scare my clients into relocating off HPL, but does anyone have a heart anymore? Even Aids victims get some kind of sympathy. I just feel like there isnt much being done to address a settlement to the land dispute, but rather everything is done according to the Hopi wishes....up to now, even I am starting to wonder. I hope you can understand the pressure were all under, with the Navajo and Hopi land issue.
With the new amendment planned out by the BIA and NHIRC, my clients have reacted angrily and see it as further harassment. Creating this tense atmosphere in HPL isnt going to solve anything for anyone because these are the people who are wanting to stay regardless and they dont want to relocate off of this area. My clients tell me that they feel like theyre at a point in time where the Government is ready to throw them to the dogs. I cant explain to the how much it hurts to see my clients shed their tears because of the insensitive Government has put their lives on hold. Theres no freedom to live on HPL, and yet theres alot of freedom to keep playing with their lives. When is this all going to end? Please consider our sides too, we like it here, where the Hopis say is theirs, when it is impossible to remove people it. In all fairness, please consider the strive for my clients behalf. Your understanding is greatly appreciated, Mr. Chairman.
Attached is my program experiences.

Thank you,

Shirley Williams, MHworker
Leupp Office 686-6203

zx: file.
NTask Force.

Tribal Mental Health
Navajo Division of Health
PO Drawer 1390
Window Rock, Arizona 86515

The FJUA Mental Health Program was formulated in 1982, to address the needs of the residents of the FJUA. A staff of one outreach worker in Teesto provided emergency services in information and referral. She identified the need for more client services, specifically emergency counseling with families, groups and individually. Currently there is a staff of three mental health counselors stationed in field offices in Pinon, Teesto and Leupp. The program director and the program secretary work at the central mental health program office in Window Rock. The Crownpoint Mental Health program and the Post Move Mental Health Program are both with this office. The Toyei Industries Inc, CMI program and the Ganado Personal Growth and Counseling Center subcontract with the tribal mental health program also. Between the five programs, not all clients are served because of the limits on the type of services each program is to provide. Especially in the case of the tribal mental health program, the basis of the problems of the clients were increased as a direct result of the PL93-531, but not much attention was given to the programs assigned to provide direct client services in the field. Every year, the mental health program struggles through providing direct services, due to an insufficient budget. FY 87-88 was the only year that our program was funded at 100% level, which amounted to 130,000 and yet we overextended the travel budget already, by January. Since the program started five years ago, no funds have been available to hire the critical positions of a clinical supervisor, outreach aides, and clerical help. To provided quality mental health services to the clients, the clinical supervisor is necessary to the program. There is a need to use this person for professional consultation, treatment plans, and case reviews required on a weekly basis. We also need this person to be the duly constituted representative in authority to improve services coordination and networking of resources at the field level, and this will allow the counselors to concentrate on service delivery. Because of the essence of being a field program, outreach aides are a necessity. They proved valuable to the accomplishment of program goals and objectives by their capability to assist in direct services in traditional counseling. Their traditional teaching benefited the counselors in understanding the cultural aspect of mental health work. Each year, the program secretary is also terminated due to lack of funds. Because of this, the field offices undergo a tremendous impact as a result of it. This impact is felt by the field personnel in the breaking off of communication with the central office and the administrative support provided by the secretary is essential to maintaining staff assurrance and communication. For the concerns of the mental health workers, there is constant client travel on a daily basis, which is mostly donated, because they dont earn overtime pay and they are only reimbursed at twenty cents a mile by the tribe. It gets pathetic when the only way to obtain money for the gas, is by borrowing off of relatives or by borrowing family vehicles to get to the clients. The limitations set on the client miles should be according to actual

client miles required to provide direct services. At the present time, client miles are set at 450 miles per two weeks and we travel 1000 miles a week to provide direct client services. To address this problem, the program obtained two tribal vehicles this year, and it helps out the workers alot, but there are other problems with their use, such as the overextention of miles on the vehicle, which is charged extra by the transportation office, and these vehicles are unable to driven during heavy snow and mud conditions on the reservation, and leaves the worker unable to provide field visits add services. One of our tribal vehicle had to be return to the Transportation office because of lack of budget to cover both vehicles. The staff also feel that while they are partly responsible for paperwork regarding client status, other paperwork should be done by clerical help at each field offices. In addition to paperwork, each worker does housekeeping chores, filing, typing, zeroxing, mail, answering phones, monthly reports and travel reports. When the program secretary leaves, there is a constant need to keep in contact with the central office and request for travel authorization,etc.
I feel that the as long as the PL93-531 dilemma continues, clients will continue to need services for however long relocation will persist. We realize that we cant readily change the law, but with your understanding and support, we can surely make required changes in the Mental Health program, so they can continue to provide direct services in a professional manner, and this i s all were asking, that the changes be made and addressed to fit the program, because this is possible.
We need a clinical supervisor for quality Mental health services to the clients, increased client travel funds, and support with paperwork by using clerical help, and assistance with field services by outreach aides. After all our clients are those who arent served by the Post Move program,whose clients are relocatees within the past two years, our clients arent all CMIs nor do they live in New Mexico, or Ganados District 16. After the Post Move program clients services are finished, they get referred back to the Mental health workers.

Shirley Williams, Leupp MH Worker
(602) 686-6203

Leupp Mental Health Office
PO Box 2636
Flagstaff, Arizona 86003
April 7, 1988

Senator D. Inouye, Chairman
Senate Select Committee on Indian Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I am a resister to relocation from Sandsprings, Arizona, and wanting to stay in HPL. The amendment that will require me to live on one acre homesite without livestock is very restrictive to accept. I am very sensitive to the environment and plans to force me to live like this. I am angry about the amendment that the NHRIC and BIA are proposing. We barely live on assistance having to stay on our land, and everything cost money, which I dont have in this materialist world. To tell me to live without livestock is to tell me to starve to death, because, this is my food, and only a dog would get this kind of treatment. I hope youre aware that the Navajo livlihood is corn and livestock, similiar to those who like to eat steaks and corn-on-cob, and everyone eats this way, and why should I be an acception. I am angry about this because I am not educated to obtain and hold down employment to buy food and feed my family, and the only way I know how is my farming and livestock, feed my family, and I dont want to be in poverty, and be elminated this way.
Because of the restrictions, our homes are getting to old to live in, and even if we relocate, we will have the same problems, about how I cant have livestock or farming areas, and will just starve. I dont plan to move anywhere, because theres no place to move to. To me relocation is a problem to those who tried it, and its a hard life if one isnt capable of providing for themself in the outside world. My family has been relocated before from Oraibi, then from District 6, and now I am being forced to relocate or just sit in a house in HPL. I can see the affect of the conflict in the atmoshere here between the Hopis and the Navajos, because we were friendly neighbors before, now we dont even have rains anymore, just wind. I dont have any transportation from this area, and I cant see myself moving anywhere, and for me to stay here without livestock and the farming crops is equally cruel. Please consider my wishes to remain on my land without restrictions to my life. Thank you for your understanding.

From,

John Lee Begay
John Lee Begay

zx: file.
client.
NH Task Force.

Leupp Mental Health office
PO Box Z636
Flagstaff, Arizona 86003
April.7, 1988

Senator D. Inouye, Chairman
Senate Select Committee on Indian Affairs
United States Senate
Washington, DC Z0510

Dear Mr. Chairman:

I am an elderly Navajo man living in HPL in Sandsprings, Arizona. Most of my children have gotten married and I have alot of grandchildren, who live elsewhere. I live here with my wife and youngest son alone in HPL, and am very contented to dying of old age here on this land. I am contented with herding my sheep where I live, and I dont have transportation, and I am contented to riding my horse to herd my livestock or to visit relatives. I like it here on my land. I dont think of relocation, and to me, is a foriegn idea for which I cant find any reason for me to accept. I just cant really understand how someone who doesnt know me or my existence can plan out my life for me without informing me about their reasons for invading in mylife.
I live on assistance and its a small check to help me along, and I dont have a desire to relocate to get some money either. I like it where I live so I dont see a need to leave it just to get some money. It isnt worth it to surround myself with foreigness while I am contented with what little I have here in HPL.
Our Navajo boys gave their lives for this land I live on, and they didnt die for this land so the Hopis could live on it. When our boys were away fighting, we went through constant prayers for them. We suffered along with our boys who fought and now the Government wants to give our land to the Hopis. They (Hopis) were exempt from fighting in the wars, so they could not extinct, and so they could take our lands from us.
Please Mr. Chairman, I like it here. Thank you for your understanding and consideration for my want to stay on my land.

From,

Tohannie Begay

X Xmark of Tohannie Begay

zx: file.
client.
NTask Force.

Leupp Mental Health Office
P.O. Box 2636
Flagstaff, Arizona 86003
April 7, 1988

Senator Inouye, Chairman
Senate Select Committee Indian Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

We dont want this amendment requiring me to live on a one acre homesite without live stock. I was born in Sandsprings, Arizona and it is here that I drew my first breath of life, my frist laugh, my frist tears were shed here, so my mind is set here, where my life has been for the past 64 years, so this is my land. This is my home, the mother earth and this is my ancestors homeland given to me to live on, as my birthright. My livestock are all here on my land, and here I am going to stay, but I refused to be fenced in one acre on my own land. The White man and foreigners to my life, are trying to make me become a vagrant and a begger, by forcing me to relocate off my homeland. If I chose to relocate, life will never be the same for me and my family, as seen in my children, who chose to relocate and are suffering from financial difficulties living outside the reservation. I like the peace and quiet of my homeland in Dinehbito (Navajo meaning Peoples water) named after the waterhole Navajos dugged out of the wash near Sandsprings.
I am afraid and I worry constantly while I am to be sleeping at night. To relocate means to me, to suffer from everything, through my childrens experiences. We could move to Natoni area, but thats the Freeze Area of 1934, and New Lands isnt for us because were an elderly couple and alone. how are we going to survive the change in our lives? But, here, we have our herbs to heal our illnesses, and keep our health, and here we have life all arounds us, in the plants, the herbs, the hills, the farming, our livestock,and our lives. My father gave me the ability to farm, and he farmed every year on this land, and I want to continue this trade through my grandchildren. There is no need to see a doctor at a clinic, because we have all the herbs we need to use here in the hills. The medicene man use these herbs from my homeland in their ceremonies, so I consider my homeland quite sacred to all living beings. My roads are here, and Mother Earth recognizes me as her child to live on this land as proclaim to me.
To relocate isnt my plan. An amendment that will fence me in, in my own homeland, away from my life of farming, livestocking and their grazing areas. This is like taking food from our mouths, to keep livestock off of our lives. Please consider my wishes. Thank you for your understanding, your fairness will be appreciated.

From, Aurora Jo McCabe

zx: File
Client
NH Task Force

Leupp Mental Health Office
PO Box 2636
Flagstaff, Arizona 86003
April 7, 1988

Senator D. Inouye, Chairman
Senate Select Committee on Indian Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

My name is Mr. Danny Jo McCabe, and I am a resident of HPL in Sandsprings, Arizona. 45 years ago, I married into my wifes family in Sandsprings, in a traditional Navajo wedding ceremony. As my children were born, I finally heard of the land dispute between the Navajo and the Hopi tribes. We never knew about this situation until we were told about from a Hopi man, and he told us the Second Mesa Hopi Villagers were planning to take land from the Navajos, because they (Hopi) had livestock and was the reason why they wanted the Navajo land. He said the idea wasnt brought on by the Oraibi Hopis, nor the others, but the Second Mesa Hopis were the ones who were planning this, and this man warned us about the pending dispute, in the 50s. We didnt think they were going all the way to removing people by forcing them to relocate elsewhere. Our councilman and leaders probably talked about this issue, but those of us who actually live on this land, never made an kind of agreement with the Hopi Tribe. We were just told, that our lands were belonging to the Hopis, and I dont recall talking to any Hopi about taking my land, and to this day, we still havent make any agreement on the Hopis taking my land. I dont want an amendment requiring me to live on one acre homesite in HPL without livestock. If there are no livestock in our lives, we will not survive, and indirectly this plan is meant for Navajos to terminate.

The Dineh people were put on this land by the creator, and the Hopi people were put on the mesas, and the creator sprinkled whitecornmeal around the mesas as a boundary for the Hopi, as their lives werent meant to live in the plains with the Navajos. Nowadays, the Hopi is out here in our homelands impounding our sheep, cattle and horses, and moreover they want the land too.

I cant move out of here and move back to my mothers land because that area is in the 1934 Freeze Area too, and my own uncle will not let me move into his area because his son says no, I pleaded with him, but to no avail. I favor Sen. MCCains amendment, but my shrine are the hills, the rocks, plants, inside HPL. I am a medicene man and my ceremonial songs and prayers talk about our Mother Earth and that we should never be removed from her. I pray mornings, noon and nights with my cornmeal asking to be allow to stay here in HPL. I dont like the fact that one Indian is turning against another Indian, fighting over this land, while we should just live in peace with our brothers. In their area, theres always been one house belonging to a Hopi man, this side of the District 6 Hopi reservation, and even he was attacked and forced off this place, by his own people. Why are Indians acting this way toward their own? I feel much of the fault is due to the lact of communication and lack of love for one another.

We were told, that the Earth was our mother, and that the Sun was our Lord, the Father. They hold us here because we belong to them, our mother and father. They take care of us daily and throughout the nights. This is what I cant leave, what my culture has taught me is my life and how my generation should grow on, forever, and this is what I cant leave behind me and just relocate. $40,000 isnt anything to me, all it is a wrong plan to make people suffer some more. Instead, we should try to to strive for recovery and relief.
Thank you for your understanding my views as a medicene man, I appreicate your concerns.

From,

X

Danny Jo McCabe

zx: file.
client.
NH Task Force.

STATEMENT OF BERTHA YAZZIE

I heard about this meeting over the radio and came to speak. (Introduces herself)

Four of my children relocated. Two of them moved to Flagstaff, one to Provo Utah, and one to Chinle. I found out through my children that relocation is something that devastates you. The children who moved off-reservation have the most problems. The land costs them every year (property taxes), they pay utility bills. They have to pay a lot for their children's food. Even if they work, the work uis not steady -- maybe four months, then they have no jobs again. Our leaders here know this because we (the chapter) have helped them (the relocated children). This year the Navajo Tribe assisted us with $600.00 for property taxes and utility bills. Often, money we could have used to spend on ourselves, the parents, is now going to feed our relocated children.

I don't want to have the same people who are in charge of relocation to continue. Neither do I support the payment of attorney fees. Too much money is being spent paying the salaries of those who are relocating us and by now some of them have become rich off of the relocation -- perhaps paying off new homes and new cars.

This one acre (proposal) is not enough. I didn't sign up for relocation, a man came by my home and asked us what kind of property I had. Latwer on I received a letter asking me to come to the Relocation Office in Flagstaff. There they told me to relocate but I told them, I won't move. I asked them, "what am I going to do if I relocate?" I'm not leaving my Mother (Earth, the spot where I was born). I was born here in the place I have my home, that's why I'm not leaving. My family members are descendents from the ruins that are located in the area. The Hopis often speak as though they are the only ones that were here, saying "those are our dishes (pottery sherds), but our forefathers were intermarried with the people who were here.

Our veterans fought for this land. They need to be heard also.

About a year ago Ross Swimmer came to Big Mountain. I told him then, "I'm not moving. If you want to, you can bring someone to haul away all my belongings, but me, I'm not moving." This is what I came to speak about -- I'm not moving.

So that's what I think, our leaders will strengthen our words so that our words can work for us. If nothing is said, someone might say"There's no word from the people," Even though I might not speak well, I want to have a say. You want people to hear what you say.

Testimony April 5, 1988 at the Flagstaff City Hall in behalf of the Senator McCain Bill Amendments...

I am a relocatee from Teesto Chapter to the City of Winslow. My name is Bill A. Dalton, Sr., and my wife is Pauline Nelson Dalton. We have four (4) children, each grown since 1974 and moving to make their own living with only 2 in High School now.

This Public Law 93-531 is a Law, that not only our family but many like ours are experiencing. In the year since we became aware of it. We ignored it for a time but because we were in 1882 Executive Order and situated in a BIA living quarters, were in a time of questionable elements were forced to move to town. This the problems became a reality and relocation was force upon us. We did not experience any problems until this Real Estate force closure on our property (House and Land), was apparent, without forecasted notice. We approached the Navajo-Hopi Indian Relocation Commission who was monitoring our post move. The post move counselor of the Relocation Commission told us there was no way they could help us for one thing our 2 years warranty was up and the Relocation Commission did not have legal service for us. We asked why the post move monitoring? No realistic reply.

The point of this statement is, the Navajo and Hopi Indian Relocation Commission relocated us but could not help us after we were relocated. We sought all kinds of legal assistance. We finally came back to the Navajo Tribe who did not relocate us, but they helped us. The Navajo-Hopi Development Office has been compassionate and under standing. Navajo-Hopi Legal Services have taken our cause to court, no thanks to the Navajo and Hopi Indian Relocation Commission.

For these reasons: My family and I support the McCain Bill with the Amendments the Navajo Tribe has incorporated, get BIA and the Navajo-Hopi Indian Relocation Commission out land hire a non-bias Commission of one (1) person and an Advisor Committee to backup.

Bill A. Dalton Sr.

"Letter of Support for the Navajos residing in the Hopi Partitioned Lands."

I am in support of the Navajos who are still residing in the Partitioned Lands.

I, as a government employee living outside the partitioned land and with my parents, brothers, grandmother, and relatives, still living there. I know my relatives are griefing from all the adverse impacts of land dispute that is being put upon them. This has affected them emotionally, mentally and physically. Being raised there as a young girl, has changed a lot, seeing my parents and relatives griefing from the problems that is there (their cattle, home, cultural beliefs that they're being denied and told to give up, those that was given to them and lived all their lives).

I know that there's no one in this world other than the Navajos to give up their land for two cents. This land should be given back to them. Who wants to live on one acre of land, even a whiteman won't, or given $40,000 just for a shack!

With this letter I hope that you will have some concerns for the people, or consideration for human beings. Let these Navajos reside where they are now! Even as an outside resident I want so much for these families to stay.

Prescilla Chatter

ON THE 1934 BENNETT FREEZE

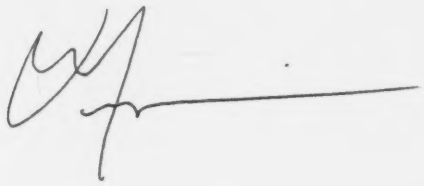
The people that are permanent residents within the Bennett Freeze area are concerned about the McCain Amendments to Senate Bill 1236.

The District 3 Council of Tuba City, Gap, Cameron, and Coal Mine Mesa Chapters, with a population of over 10,000 people, met with a part of District 1, Coppermine and Tonalea Chapters, to discuss the Bennett Freeze. The construction freeze regulations are directly invoking a denial of human and property rights, and people in these chapters are unable to for their futures or their children's futures. These people have been denied an essential base of their traditional religion by being unable to construct hogans for ceremonial purposes. Their use of water from Pasture Canyon was denied by Moenkopi Village; their right to farm has been locked up with the water. Now their farms are dry.

The Tuba City Chapter approved 32 relocation homesites in 1984 and we are still waiting for the Relocation Commission to produce a plan for developing these lots. Meanwhile some of the relocatees are living in earthen dugouts because they are not allowed to build permanent structures.

The Tuba City administrative area consists of 3,000 acres, 65% of which is used by the BIA, IHS, the schools, and public housing projects. 5,500 people are packed into the remaining 35% of Tuba City. Since the enactment of the Bennett Freeze, the amount of land available in the Administrative Area is getting smaller, and the opportunity to dwell outside the are is also getting smaller.

Students living in the Freeze Area have poor grades because they have no lights at home and cannot study at night. The Hopi Tribe will not grant a right of way for power lines. For these reasons, the McCain Amendments must be passed.



RESOLUTION OF THE
CHAMBERS/SANDERS TRUST LANDS (NAHATA DZIIL) COMMITTEE

Requesting U.S. Senator John McCain to Fulfill His Statement of Support and Assurance that Families Be Allowed (100 SUYL) On the New Lands As Originally Promised by the BIA and Navajo and Hopi Indian Relocation Commission and Requesting the U.S. Senate Select Committee on Indian Affairs to Support the Provision of 100 SUYL and Be Addressed on the Proposed Amendments of S.B. 1236

WHEREAS

1. We are Navajo families who bear census numbers, who have relocted to the Chambers/Sanders Trust Lands, which are now part of the Navajo Reservation; and

2. We have established an Ad-Hoc Committee to provide self-government and advocacy, and are seeking ways in which our community can receive legal recognition and serve as a vehicle through which we can receive chapter-level government services; and

3. P.L. 93-531 mandated and forced reloction. Pursuant to P.L. 96-305, Navajo and Hopi Indian Relocation Commission provided a plan for families who dependent on traditional grazing lifestyles and community facilities and services be developed at their New Lands; and

4. Navajo and Hopi Indian Relocation Comission and BIA Social Work Program, while conducting a survey of relocation preferences to the New Lands also have promised the Resettlement Families the privileges of grazing 100 SUYL on the New Lands which has not been fullfilled; and

5. Families who accepted relocation to the New Lands are very traditional and have the greatest needs to continue grazing privileges to support their families and maintain a livelihood; and

6. In the best interest and consensus of the families, and Ad-Hoc (Nahata Dziil) Committee was organized on May 31, 1987 and recognized by Navajo-Hopi Land Commission of the Navajo Tribal Council. This committee represents a foundation and serves as a governmental unit where needs and concerns are expressed, problems are attempted to be resolved and exercise their basic human rights, and

7. The assurance of future employment on the New Lands is not addressed, the traditional grazing lifestyles provides barely enough source of food, income wool/mohair for weaving rugs to produce income and livestock is a necessity for mainly food, income and security.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Ad-Hoc (Nahata Dziil) Committee and community hereby request U.S. Senator John McCain and the U.S. Senate Select Committee on Indian Affairs to acknowledge the problems, facts of impacts and needs of the families who are residing on the Chambers/Sanders Trust Lands.

2. U.S. Senator John McCain visited the New Lands, observing, listening and asked the families how they have been enduring since relocation to the New Lands and assured then, the original promise of 100 SUYL for families would be fulfilled.

3. Further request that you support, address and approve the 100 SUYL as originally promised by BIA and Navajo and Hopi Indian Relocation Commission.

4. Further request you acknowledge the fact, future employment is not addressed and community development have not been pursued yet.

5. We hereby submit justification, reasons why we maintain livestock and request for increase of sheep unit to 100 sheep units year long (SUYL) to meet the needs of our livelihood: Source of income, income to meet the needs of financial burden, to pay for clothes and household and personal necessities, furnitures, vehicles, loans, insurance, educational loans, medical expenses and countless listing and especially utilities. Provides wool/mohair for weaving rugs to produce income. Sheep skin used for/as bedding during traditional ceremonials and often used by the elderly. Provides educational experiences and values for all traditional Navajos.

6. Further request you acknowledge the fact, a family may raise nearly 100 SUYL by spring time, but traditional ceremonies and puberty ceremonies will reduce them. By summer, children are not in school, consume more mutton for food, social activities are consuming more sheep and late summer requires children to buy school clothing. By fall, auctions take place all over the country which reduces livestock. By winter, a family may have nearly 30 sheep and have to start all over again to reach 100 sheep units.

7. We hereby request U.S. Senator John McCain to fulfill his statement of support and assure that families be allowed the right to graze 100 SUYL and to have the Senate Select Committee on Indian Affairs to support the provisions of 100 SUYL for the benefit of the Chambers/Sanders Trust Lands (Nahata Dziil) Community.

C E R T I F I C A T I O N

I hereby certify that the foregoing resolution was duly considered by the Chambers/Sanders Trust Lands (Nahata Dziil) Ad-Hoc Committee at a duly called meeting at Sanders, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 38 in favor and 0 opposed, this 7th day of April, 1988.

Sam Danny
Sam Danny
Presiding President

WRITTEN COMMENTS SUBMITTED TO THE NAVAJO-HOPI LAND COMMISSION ON APRIL 5, 1988 IN FLAGSTAFF, ARIZONA - BY RON C. WOOD.

Hello. My name is Ron C. Wood and I am from Fort Defiance, Arizona. I am here at the request of my wife and my in-laws who reside on the Hopi Partitioned Lands (HPL) at Big Mountain. My wife's name is Pita Ashike Wood and her mother is Violet Ashike.

It is very important that this land dispute be settled at the earliest possible date but it must be a humane settlement that respects the Dine' peoples religious and land rights.

We are in general agreement with the McCain amendments and support his amendments with some modifications. We agree that fewer commissioners and BIA Bureaucrats would be an improvement. We also agree that fewer lawyers and litigation would also be an improvment.

We would recommend however, that a Comprehensive Settlment of the Bennett Freeze Area be made a part of McCain amendments. This issue has halted development for a half century and needs to be resolved now the the benefit of both tribes.

In regard to the Navajo and Hopi Indian Relocation Commission - BIA proposals, the following comments are made:

-The BIA is proposing a quick financial solution to this complex problem. Throwing money at the problem will not resolve the problem.

-The one acre homesites are not enough land. People who chose to remain on HPL land should have enough land to graze their livestock and support themselves. The amount of land needed should be determined by family size and the carrying capacity of the land, but in no case should any family have less that one section of land (640 acres). Without land, people will be reduced to welfare to survive and this creates other problems.

We sincerely hope that the Navajo Tribe will develop and lobby for a settlement that will propose that HPL Navajos be allowed to remain on their homeland with livestock and the land per family head of household be a minimum of one section (640 acres).

RESOLUTION OF THE
NAVAJO-HOPI LAND COMMISSION

Opposing the Proposed Amendments to Senate Bill 1236 Submitted by the Bureau of Indian Affairs and the Navajo and Hopi Indian Relocation Commission

WHEREAS:

1. The Navajo Tribal Council on August 7, 1972 passed resolution CAU-70-72 which established the Navajo-Hopi Land Dispute Commission; and

2. The Advisory Committee adopted the plan of operation of the Navajo-Hopi Land Commission (ACAP-49-83) wherein it specified the powers of the Navajo-Hopi Land Commission:

> "To advise the Chairman of the Navajo Tribal Council concerning all matters relating the land use conflicts between the Navajo Nation and the Hopi Tribe, and any claimants in and to lands within the areas described in the Act of June 14, 1934 (48 Stat. 960)."

3. Senator Daniel K. Inouye has introduced a Reauthorization Bill, S.B. 1236 which would appropriate $30 million yearly for the completion of relocation by the Navajo and Hopi Indian Relocation Commission (NHIRC) and the Bureau of Indian Affairs (BIA); and

4. Senator John McCain has proposed Amendments to S.B. 1236 which imposed safeguards and limits, and arressed the issues of BIA and NHIRC responsibility and accountability; and

5. The Federal Government's relocation enumeration project of the years 1977 and later is incomplete because it does not account for the children of HPL residents; and

6. The interests of Navajo veterans,, who fought to save the homeland they are not being evicted from, were not addressed in proposals to amend S.B. 1236; and

7. Section 17(b) of Public Law 93-531 as amended, exempting federal employees from relocation, has not been implemented in any rationale or helpful way; and

8. The Navajo-Hopi Land Commission has always supported and continues to encourage land exchanges to resolve land dispute issues between the Navajo Tribe and the Hopi Tribe affected communities; and

9. Some residents of the HPL have filed a class action suit declaring relocation a violation of their First Amendments Rights and Freedom of Religion.

NOW THEREFORE BE IT RESOLVED:

1. The Navajo-Hopi Land Commission opposes the proposed amendments to Senate Bill 1236 submitted by the Bureau of Indian Affairs and the Navajo and Hopi Indian Relocation Commission.

2. The Navajo-Hopi Land Commission opposed the proposed amendments because of BIA and NHIRC's past failures and their insensitive treatment of the Navajo people.

3. The Navajo-Hopi Land Commission supports and encourages the adoption of the Amendments to S.B. 1236 as proposed by Senator John McCain.

4. The Navajo-Hopi Land Commission requests that a proper enumeration of HPL residents be made that includes the children of HPL residents and residents who were not previously counted because of employment, hospitalization, military service, or other reasons.

5. The Navajo-Hopi Land Commission further requests and calls for recognition of Navajo veterans in matters related to the land dispute.

6. The Navajo-Hopi Land Commission further requests and calls for a reexamination of Section 17(b) of Public Law 93-531 as amended so that this section protects the interest of the children of government employees.

7. The Navajo-Hopi Land Commission continues to call for land exchanges between the Navajo Tribe and the Hopi Tribe.

8. The Navajo-Hopi Land Commission supports the cry for recognition, through lawsuit or other means, of the right to Freedom of Religion of Navajos who are subject to relocation against their will and religious belief.

C E R T I F I C A T I O N

We hereby certify that the foregoing resolution was duly considered by the Navajo-Hopi Land Commission of the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (Arizona) at which a quorum was present and that same was passed by a vote of 7 in favor and 0 opposed this 7th day of April, 1988.

Presiding Chairman

AD HOC (Nahata Dziil) COMMITTEE
MEETING ON APRIL 7, 1988

1. Sam Denny - PRESIDENT
2. Keith Begay - VICE PRESIDENT
3. Ann Herder
4. Jay Jannie
5. Delgai Begay
6. Moises Begay
7. Keith John Manybeads
8. Irene Manybeads
9. Ella Romero
10. Sarah
11. Betty Herder
12. Bruce Yazz
13. Brandon B. Yazzie
14. Bryan Yazzie
15. Marlene Yazzie
16. Jeanette Denny
17. Andrew Yazzie Jr.
18. Evelyn B Yazzie
19. Jimmy Tsosie
20. Rose M. Tsosie
21. Albert Herder
22. ALFRED R. YAZZIE w/ only 11 SUYL WANT to Extent My Permit.
23. Billy Williams
24. Janet Jannie
25. Helen Benally - COMMUNITY LIAISON

26 Frank Nez
27 HAZEL-NEZ
28 Virgil Yazzie
29 Sherry Yazzie
30 Tom Joe
31 Catherine Joe
32 LaJanya Yazzie
33 Sharon Largo
34 Lanford Yazzie
35 Nancy Silth
36 Babe Silth
37 Lucy Romero
38 Maybelle M. Begay - SECRETARY

RESOLUTION OF THE
NAVAJO PEOPLE (RESISTERS) ON
THE HOPI PARTITIONED LANDS
TEESTO CHAPTER, NAVAJO NATION

The key principles for the purpose of requesting a comprehensive resolution of all situations affecting the Navajo people (resisters) residing within the Hopi Partitioned Lands (Teesto Chapter, Navajo Nation) while being impacted by Public Law 93-531 and Public Law 96-305. We authorize the Navajo-Hopi Land Commission, the Navajo-Hopi Task Force and the Navajo Tribal Chairman Peter MacDonald to seek an appropriate plan of services for the navajo people (resisters) residing on the Hopi Partitioned Lands (Teesto).

We the people of the Hopi Partitioned Lands (Teesto) are frustrated and opposed to all of the following being proposed by the Navajo-Hopi Indian Relocation Commission and Bureau of Indian Affairs.

WHEREAS:

1. The agencies support both the increase in funds for bonus payments (from $5.3 million to $13 million) and the increase in funds for relocation housing to $80 million (from $15 million anually).

2. The agencies support changing the discretionary funds to remove existing requirements for cost sharing.

3. Intending to accelerate the settlement of the 1934 dispute by making the District Court's decision appealable directly to the Supreme Court and permitting one-acre homesite leases for those residing in the areas owned by the other tribe, also prohibit relocation.

4. The agency or agencies would permit one-acre or a measure of land; 43,560 square feet homesite leases for persons who would continue to reside on the Hopi Partitioned Lands.

The Navajo (resisters) or the Navajo Tribe would have to pay the Hopi Tribe for the homesite leases.

Those who remain would not be eligible for the Navajo-Hopi Indian Relocation benefits.

Only those who continuously reside on the Hopi Partitioned Lands for two years after the enactment of the law S. 1236 would be permitted to stay.

5. Allows on a one-time basis $40,000.00 cash payment in lieu of relocation benefits.

6. Establishes a revolving Rehabilitation Fund which will be funded at $5 million per year to assist New Land Relocatees. However, the monies would be repaid (with interest) from income generated from acquired lands to the Federal government. Once all the amount deposited by the Federal government is repaid, then the money earned would continue to be put in the fund for use for the benefits of.

7. No more funds for process of carrying on a lawsuit after fiscal year 1989.

8. Trust funds earned by a tribe will be automatically paid to the other tribe if the Secretary determines it should be paid.

NOW THEREFORE BE IT RESOLVED:

1. We the Navajo people (resisters) of the Hopi Partitioned Lands of Teesto Chapter, Navajo Nation, urge and recommend that the proposed amendments in S. 1236 be respectfully approve the single commissioner and report the history or the historical background of the land dispute from 1864 and up to date; all executive orders and public laws; including report on enumerations statistics, statistical report on appraisals, report on population statistics, reports on adverse impacts, report the functioning of the Relocation program, report the functioning of the community consultations and all planning, monitoring, and budgeting of the overall Relocation program.

2. Recite the Public Law 93-531 and concentrate on veterans and federal employees (veterans, veterans of foreign wars, disabled veterans, federal employees, and federally retired employees of BIA and PHS) still residing on the Hopi Partitioned Lands.

Section 17.(b) of the Relocation Act shows that they are not subject to relocation and thus should also not be subject to any harsh collateral effects of the Relocation Act. That we are within our rights to practice religion the "Enemy Way Ceremony" one of the Navajo ceremonies which involves improving hogans and other improvements, stop impoundment of livestock, lift the construction freeze, improve and grade dirt roads.

We authorize and request that the Hopi Tribe be informed that we are legally within our rights to improve our livelihood.

3. Current Harassments.

a. The Hopis are fencing within the existing fences into small sections, some around ancient ruins, burial grounds, and ceremonial sites (including cattle guards).

b. The Hopis are grazing non-domestic cattle onto the lands where Navajos herd sheep, perform ceremonies, and onto their properties.

c. The Hopis are impounding our livestock and not informing the public or notifying the owners.

d. Improving dams and improving our water source for their cattle.

e. The Hopis are speeding on our dirt roads and have caused some accidents (vehicle).

f. Some Hopis are building homes/shacks near homes without notifying the Navajo and Hopi Tribes.

We the Navajo people (resisters) of the Hopi Partitioned Lands of Teesto Chapter strongly support S. 1236 and hereby ratify, adopt, approve and congruently conjoin to the following statements:

1. End Bureau of Indian Affairs' involvement in relocation, and replace the Relocation Commission with a single commissioner.

2. Put present Relocation Commission staff into civil service system, under the new commissioner.

3. Eliminate the payment of attorney fees for land dispute litigation.

4. Require the preparations of additional plans and reports.

C E R T I F I C A T I O N

We hereby certify that the foregoing resolution was considered by the Navajo people (resisters) of the Hopi Partitioned Lands (Teesto) and approved, March 1988.

Melvin Miles, Spokeman
Star Mountain/Finger Point Valley
Teesto, Navajo Nation, (Arizona)

THE NAVAJO NATION

PETER MacDONALD, CHAIRMAN
THE NAVAJO TRIBAL COUNCIL
JOHNNY R. THOMPSON, VICE CHAIRMAN
THE NAVAJO TRIBAL COUNCIL

RESOLUTION
DISTRICT SEVEN COUNCIL
NAVAJO NATION, ARIZONA

OPPOSING THE PROPOSED AMENDMENTS TO SENATE BILL 1236 SUBMITTED BY THE BUREAU OF INDIAN AFFAIRS AND THE NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

WHEREAS:

1. The District Seven Council is a certified and an authorized entity of the Fort Defiance Agency (Navajo Nation) to advocate for and in the best interest of its constituents, pertinent to their health, safety, and general well-being; and

2. A majority of the District Seven Council and members are very much concerned and adversely affected by Public Law 93-531 as amended; and

3. Senator Daniel K. Inouye has introduced a Reauthorization Bill, S.B. 1236, which would appropriate $30 million yearly for the completion of relocation by the Navajo and Hopi Indian Relocation Commission (NHIRC) and the Bureau of Indian Affairs (BIA); and

4. Senator John McCain has proposed amendments to S. B. 1236 which imposed safeguards and limits, and addresses the issues of BIA and NHIRC responsibility and accountability; and

5. The Federal Government's relocation enumeration project of the years 1977 and later is incomplete because it does not account for the children of HPL residents; and

6. The interests of Navajo veterans, who fought to save the homeland they are now being evicted from, were not addressed in proposals to amend S. B. 1236; and

7. Section 17(b) of Public Law 93-531, as amended, exempting federal employees from relocation, has not been implemented in any rational or helpful way; and

8. The District Seven Council has always supported and continues to encourage land exchanges to resolve land dispute issues within its chapter; and

9. Some residents of the HPL have filed a class action suit declaring relocation a violation of their First Amendment Rights and Freedom of Religion.

Post Office Box 308 • Window Rock, Navajo Nation (ARIZONA) • (602) 871-4941

NOW THEREFORE LET IT BE RESOLVED:

1. The District Seven Council strongly opposes BIA's and NHIRC's proposed amendments to S. B. 1236 because of their past failures and their insensitive treatment of the Navajo people; and

2. The District Seven Council supports and encourages the adoption of the amendments to S. B. 1236 as proposed by Senator John McCain; and

3. The District Seven Council requests that a proper enumeration of HPL residents be made that includes the children of HPL residents and residents who were not previously counted because of employment, hospitalization, military service, or other reasons; and

4. The District Seven Council further requests and calls for recognition of Navajo veterans in matters related to the land dispute; and

5. The District Seven Council further requests and calls for a re-examination of Section 17(b) of Public Law 93-531 as amended so that this section protects the interests of the children of government employees; and

6. The District Seven Council continues to call for land exchanges in its former chapter area; and

7. The District Seven Council supports the cry for recognition, through lawsuit or other means, of the right to Freedom of Religion of Navajos who are subject to relocation against their will and religious beliefs.

CERTIFICATION

We hereby certify that the foregoing resolution was duly considered at a duly called District Seven Council meeting at Jeddito Chapter House, Navajo Nation, Arizona, at which a quorum was present and that the same was passed by a vote of 18 in favor and 0 opposed, this 9th day of April, 1988.

George B. Clark

George B. Clark, President

Marlin Scott

Marlin Scott, Vice President

Lorena Bahe

Lorena Bahe, Secretary/Treasurer

RESOLUTION

of the

DISTRICT #3 COUNCIL

OPPOSING THE PROPOSED AMENDMENTS TO SENATE BILL 1236 SUBMITTED BY THE BUREAU OF INDIAN AFFAIRS AND THE NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

WHEREAS:

1. The District #3 Council is a recognized governmental entity with members representing the Navajo Chapters of Bodaway, Gap, Cameron, Coalmine Mesa, and Tuba City to advocate for and in the best interest of its constituents, pertinent to their health, safety, and general well-being; and

2. A majority of the members of this community are very much concerned, and adversely affected by Public Law 93-531 as amended; and

3. Senator Daniel K. Inouye has introduced a Reauthorization Bill, S.B. 1236, which would appropriate $30 million yearly for the completion of relocation by the Navajo and Hopi Indain Relocation Commission (NHIRC) and the Bureau of Indian Affairs (BIA); and

4. Senator John McCain has proposed Amendments to S.B. 1236 which imposed safeguards and limits, and addresses the issues of BIA and NHIRC responsibility and accountability; and

5. The Federal Government's relocation enumeration project of the years 1977 and later is incomplete because it does not account for the children of HPL residents; and

6. The interest of Navajo Veterans, who fought to save the homeland they are now being evicted from, were not addressed in proposals to amend S.B. 1236; and

7. Section 17(b) of Public Law 93-531 as amended, exempting federal employees from relocation, has not been implemented in any rational or helpful way; and

8. District #3 Council has always supported and continues to encourage land exchanges to resolve land dispute issues within its Chapter; and

9. Some residents of the HPL have filed a class action suit declaring relocation a violation of their First Amendment Rights and Freedom of Religion.

NOW THEREFORE LET IT BE RESOLVED:

1. The District #3 Council strongly opposes BIA's and NHIRC's proposed amendments to S.B. 1236 because of their past failures and their insensitive treatment of the Navajo people; and

2. The District #3 Council supports and encourages the adoption of the Amendments to S.B. 1236 as proposed by Senator John McCain; ~~and construction of new housing~~; and,

3. The District #3 Council requests that a proper enumeration of HPL residents be made that includes the children of HPL residents and residents who were not previously counted because of employment, hospitalization, military service, or other reasons; and

4. The District #3 Council further requests and calls for recognition of Navajo veterans in matters related to the land dispute; and

5. The District #3 Council further requests and calls for a reexamination of Section 17(b) of Public Law 93-531 as amended so that this section protects the interests of the children of government employees; and

6. The District #3 Council continues to call for land exchanges in its former Chapter Area; and

7. The District #3 Council supports the cry for recognition, through lawsuit or other means, of the right to Freedom of Religion of Navajos who are subject to relocation against their will and religious beliefs.

CERTIFICATION

We hereby certify that the foregoing resolution was duly considered at a duly called District #3 Council Meeting at Cameron, Navajo Nation, Arizona, at which a quorum was present and that the same passed by a vote of 21 in favor and 0 opposed, this 9th day of April, 1988.

District #3 Council President

Harry Williams Sr.
District #3 Council Vice President

Helena W. Smith
District #3 Council Secretary

motion: Dillon Edgewater (Tuba City)
Second: Mary Begay (Cameron).

RESOLUTION

OF THE

COALMINE MESA CHAPTER/COMMUNITY

OF TUBA CITY, NAVAJO NATION, ARIZONA

OPPOSING THE PROPOSED AMENDMENTS TO SENATE BILL 1236 AS SUBMITTED BY THE NAVAJO-HOPI INDIAN RELOCATION COMMISSION AND THE BUREAU OF INDIAN AFFAIRS.

WHEREAS:

1. The Coalmine Mesa Chapter/Community is a certified and authorized chapter of the Navajo Nation to advocate for and in the best interest of its constituents, pertinent to their health, safety, and general well-being; and,

2. The chapter community in its entirety, is very much concerned and adversely affected by Public Law 93-531 as amended; and,

3. Virtually all residences are in a deplorable, substandard and overcrowded state due to the ban on construction in Hopi Partitioned Lands and the Statutory Freeze area; and,

4. Senator Daniel K. Inouye has introduced a Reauthorization Bill, S.B. 1236, which would appropriate $30 million yearly for housing benefits and $13 million yearly for bonuses for the completion of relocation by the Navajo-Hopi Indian Relocation Commission (NHIRC) and the Bureau of Indian Affairs (BIA); and,

5. Senator John McCain has proposed Amendments to S.B. 1236 which impose safeguards and limits, and address the issues of BIA and NHIRC responsibility and accountability; and,

6. The Federal Government's relocation enumeration project of 1977 and ensuing years is incomplete because it lacks an accurate account for all the children of HPL residents; and,

7. The interests of Navajo Veterans, who fought to save the homeland they are being evicted from, were not addressed in proposals to amend S.B. 1236; and,

8. Section 17(b) of Public Law 93-531 as amended, exempting federal employees from relocation, has not been implemented in any rational and helpful way; and,

9. Coalmine Mesa Chapter/Community has always supported and continues to encourage land exchanges through comprehensive solution to resolve land dispute issues within its chapter; and,

10. To further ensure NHIRC's responsibility and accountability, it is necessary that its commissioner's office be situated on or near the affected areas; and,

11. Coalmine Mesa Chapter/Community has supported the residents of HPL who have filed a class action suit declaring relocation a violation of their First Amendment Rights and Freedom of Religion.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Coalmine Mesa Chapter/Community strongly opposes the NHIRC and BIA's proposed amendments to S.B. 1236 because of their past failures and their insensitive treatment of the Navajo people.

2. The Coalmine Mesa Chapter/Community supports and encourages the adoption of the Amendments to S.B. 1236 as proposed by Senator John McCain with inclusion of new housing construction in Statutory Freeze Area, exclusion of the checkerboard area from "Freeze" and litigation, and provide economic development with employment without Hopi approval; and,

3. The Coalmine Mesa Chapter/Community requests that a proper enumeration of HPL residents be made which includes all the children of HPL residents and residents who were not previously counted because of being temporarily away for employment, hospitalization, military services, education, and other reasons.

4. The Coalmine Mesa Chapter/Community further requests and calls for a re-examination of Section 17(b) of Public Law 93-531 as amended so that this section protects the interests of the children of federal employees.

5. The Coalmine Mesa Chapter/Community continues to call for land exchanges, which includes a comprehensive solution, in its chapter area; and,

6. The Coalmine Mesa Chapter/Community further requests and calls for recognition of Navajo Veterans in matters related to the land dispute.

7. The Colmine Mesa Chapter/Community supports the cry for recognition, through lawsuit or other means, of the right to Freedom of Religion of Navajos who are subject to relocation against their will and religious beliefs.

8. The Coalmine Mesa Chapter/Community requests that the NHIRC Commissioner's office be located on or near the affected area.

9. Testimony and attendance of the Coalmine Mesa Chapter/Community public hearing on S.B. 1236 are hereby attached.

C E R T I F I C A T I O N

WE, HEREBY CERTIFY THAT THE FOREGOING RESOLUTION was duly considered at a special called Public Hearing at Coalmine Mesa, Navajo Nation, Arizona, at which a quorum was present and that same was moved for adoption by David Chissie, second by Cecil Nez, and passed by a vote of 51 in favor and none opposed on Sunday, the 10th day of April 1988.

Tincer T. Nez, Council Delegate

Irving M. Billy, Council Delegate

EXCUSED
Richard George, Council Delegate

Harry Williams, Sr., Chapter President

Charlie McCabe, Chapter Vice-President

Selena W. Smith, Chapter Secretary

SUMMARY OF
PUBLIC HEARING
ON
SENATE BILL 1236

COALMINE MESA CHAPTER
(NAVAJO NATION, ARIZONA)

APRIL 1[illegible], 1988

I. Call to Order - Charlie McCabe, Chapter Vice-President.

II. Invocation - Harry Williams, Chaptar President.

III. Introductions - Tincer T. Nez, Council Delegate.
1. Larry Biltah, Council Delegate of Jeddito Chapter and Vice-Chairman of Navajo-Hopi Land Commission
2. Louie Barton, Staff Member of Navajo-Hopi Land Development (Window Rock)
3. Evelyn Acothley, Bodaway/Gap Chapter (Vice-President)
4. Daisy G. Begay, Bodaway/Gap Chapter (Secretary)
5. Vincent DinehDeal, Red Lake Chapter (Community Coordinator)
6. Louis Denetsosie, Private Attorney
7. Irving Billy, Council Delegate for Coalmine Mesa/Tuba City Precincts
8. Kee R. Tsosie, Bodaway/Gap Chapter (Council Delegate)
9. Sally Tsosie, Bodaway/Gap Chapter

IV. Welcome Statement - Selena W. Smith, Chapter Secretary.

V. Report on S.B. 1236
1. Larry Biltah
   A. Brief background of land issues from 1868 to P.L. 93-531.
   B. Senator Daniel Inouye's Proposed Bill as introduced.
2. Louie Barton
   A. McCain's Amendments:
      1) Replace 3 commissioners with on commissioner.
      2) Removes BIA
      3) Restricts legal services expenses by the NHIRC.
      4) Requires 6 months and 1 year reports.
      5) Allows some development in 1934 Bennett Freeze (except new housing).
      6) Limits attorney fees for both Navajo and Hopi Tribes.
   B. NHIRC and BIA Proposals:
      1) Appropriation Authorization
         --$80 million - Housing
         --$13 million - Bonuses
      2) Expediting Resolution of 1934
         *put into force quickly--one acre homesite lease (7/7/86)
      3) One acre homesite lease for Resistors
         *No grazing privileges
      4) $40,000 Cash Buy-Out for Those Awaiting Relocation
      5) Rehabilitation fund of $5 million a year
         *For those in need in New Lands
      6) Termination of Federal support for litigation after 1 year
         *For HPL residents
      7) Assuming Tribal Payment for Required Rents
         *Pay on 1 acre
   C. Senate Hearing on April 12, 1988.
   D. Mark Up on April 14, 1988.

VI. Public Hearing (See attached Testimonies).

VII. Action - Resolution

Proposed resolution was read by Selena Smith in Navajo language. David Chissie moved, second by Cecil Nez, to approve the resolution in opposition to the proposal submitted by NHIRC and BIA. Motion carried by 51-0 vote.

VIII. Others:
1. Comments by Kee R. Tsosie.
2. Closing comments by Larry Biltah.
3. Harry Williams informed that at the District #3 Council meeting on April 9, it was approved that the four chapters donate $375.00 each for Richard George to represent the 1934 area at the Senate Hearing in Washington, D.C. on April 12. Action was due to report that tribal funds were lacking to send more than two tribal delegates. Raimbursement will be sought of the Navajo Tribe.

IX. Announcements:
1. April 17, 1988 - Planning Committee meeting at 10 a.m.
2. April 20, 1988 - Rodeo Committee meeting at 7 p.m.
3. Rodeo Committee currently selling raffle tickets.
4. April 19, 1988 - Special Election for Grazing Committee Member.
5. May 1, 1988 - Chapter meeting with Mother's Day Dinner.
6. May 22, 1988 - Planning Committee meeting at 10 a.m.
7. May 28-29, 1988 - 40th Annual Coalmine Canyon Rodeo.
8. April 23, 1988 - Welcome Dinner honoring New Lands Residents, hosted by Sanders School, surrounding chapters and communities.

X. Adjournment
Motion by David Chissie, second by Earl Nez, and passed by 52-0 vote.

XI. Benediction - David Chissie.

Recorded by:

Selena W. Smith, Chapter Secretary
Coalmine Mesa Chapter

TESTIMONIES ON S.B. 1236

1. Glenmore Begay - Coalmine Mesa Chapter (1934 Resident):

I totally disagree with one acre homesites in 1934 as proposed by NHIRC and BIA. The NHIRC commissioners did not accomplish much and should be required to provide quarterly reports--to be included in McCain's amendment.

2. Danny Blackgoat - Former HPL Resident (Returned Relocatee):

Personally, I have suffered the adverse consequences of relocation and I do not want to see other people experience what I have gone through. It is not good for us to just follow what the Federal Government proposes to make into law! People need to have a better understanding before making decisions. We should not just depend on our leaders to act for us--we have to be a part of the process. I accepted $66,000 relocation benefits, which I intend to repay, because I have lost my wife, children and home. I actually became suicidal, but am currently on the trail to recovery through the Navajo beauty way. Due to my negative experiences, I do not want my people to suffer what I have.

3. Joe Davis - Coalmine Mesa Chapter (HPL):

We, as the Navajo people, have been given many promises by the Federal government--a majority of which have not been kept. Our children who were of very young ages at time of 1977 enumeration have become parents and have children now but denied certification. About two years ago, they were informed that they could apply for benefits. Applications were submitted but still they were not certified. Our own people working for NHIRC determined the eligibility without involvement of the commissioners. This I have my qualms with. Secondly, those who have lost their homes and lands should be considered priority for Navajo Nation lands that become available. At the time of our application for relocation, we were promised that various public services and facilities would be made available at our new homesites, yet to this day, the reality of such promises are non-existent. According to its proposal, NHIRC intends to accomplish relocation in one year--how can they do that when many residences were constructed but lack water, power and other utilities. I agree with McCain's amendments and request that new housing construction be included with other developments. I disagree with NHIRC/BIA Proposal in its entirety.

4. Harry Nez - Coalmine Mesa Chapter (HPL):

I have attended Public Hearings at Teesto, Flagstaff, Jeddito and here today. Some of our people from this chapter are in HPL and others are in 1934 area, yet we are all inter-related and care for one another. I support McCain's amendments. We had our property and other improvements appraised for compensation through NHIRC but this has been discontinued since July 1986--this is one of the broken promises. Federal support of Tribes with attorney fees has caused major problems for the Navajo people and I agree with the proposed limitation. I agree with the leeway for some development in 1934 which would alleviate some existing problems--upgrade deplorable and overcrowded conditions. I totally disagree with the contents of NHIRC/BIA Proposal. I support amendment to S.B. 1236 with McCain's proposal. I ask that the Navajo people unite in prayer for an improved livelihood. We as a chapter still have hope and support land exchange through comprehensive solution to resolve all land issues affecting the Navajo people.

7. Evelyn Acothley - Bodaway/Gap Chapter (1934):

As Chapter Vice-President, I am here for my people since they are not aware of the proposed Bill. Half of our chapter is in 1934 and the people feel they are not fully represented on the Navajo-Hopi Task Force. We have set up our own committee at the chapter level to address 1934 issues. We have also designated Richard George and Tincer Nez as our representatives on 1934. We were informed at the District #3 Council meeting on April 9 that the 1934 area was not going to be represented at the Senate Hearing in Washington, D.C. The District #3 Council, consisting of elected representatives from Bodaway/Gap, Cameron, Coalmine Mesa and Tuba City, approved for each to contribute $375.00 for Richard George as its 1934 representative to the Senate Hearing on S.B. 1236 on April 12. On behalf of Bodaway/Gap chapter, I support McCain's amendments but would like to request that new housing construction be permitted due to the increasing population and overcrowded living conditions. What is the status of the comprehensive solution and what impact will amending P.L. 93-531 have on it? I'd like to also request the Navajo-Hopi Task Force for a report and update at Bodaway/Gap Chapter on April 23.

(Was informed by Mr. Biltah that the comprehensive solution is a separate issue and is being addressed aside from this).

6. Daisy G. Begay - Bodaway/Gap Chapter (1934):

As chapter secretary of Bodaway/Gap Chapter, I request that new housing construction be allowed. A member of our chapter indicated that he has nine children with 3 in-laws, all of whom reside in one dwelling in 1934 area. New housing is a major need. I am also concerned with 1934 representation to all land issues that affect the people. I am aware of the impact of these land issues--we need to work together to address these problems.

7. David Chissie - Coalmine Mesa Chapter (HPL):

The purpose of S.B. 1236 is to amend Public Law 93-531. In that law, it states that human rights will not be violated. The law has been enacted, it cannot be changed or repealed, it can only be amended. The purpose is to appropriate funds for NHIRC which is coordinating relocation. When you try to contact the Commissioners at NHIRC it is always impossible. They are all anglos and we cannot communicate with them. They do not come out to work with us. BIA involvement has proven to be a major obstacle in the relocation process. Periodic reporting by NHIRC is needed. There are alot of needs for projects in 1934 area. I support McCain's amendments. I will not reflect on the proposal of NHIRC and BIA which contains items that have and will have drastic impacts on all of us.

8. Andrew Begay - Coalmine Mesa Chapter (1934):

I am a World War II Veteran, although I am uneducated. I was sworn to serve my country, the United States of America, for my people and their livelihood. I served active duty on foreign gounds for two years and was wounded in action. I have served all the people of America! Why is the Government making me and my people suffer--I fought for this land and feel I have earned the right to live where I am without being forced to move. We have our Bill of Rights and yet why do we suffer? We cannot say very much because we have suffered much, however, we still hope for improved livelihood. Since I have served my country, I am presently resisting relocation. I only ask that a report on the Senate Hearing be provided at a later chapter meeting.

9. Ned Nez - Coalmine Mesa Chapter (1934 / HPL):

I am a resident of 1934 and my wife is from HPL. I have realized that we as a group of people are not always united in our efforts. Our views vary because we are either educated or uneducated. Our HPL residents have suffered a great deal and after exhausting efforts to alleviate their confrontations, have chosen to relocate elsewhere. I cannot say they did wrong because there is not solution yet. I emphasize that the comments of Andrew Begay, speaking as a Veteran, be recognized and valued. I agree that 1934 litigation be resolved immediately, we are tirsd of waiting. If the freeze is lifted, we can start doing things for ourselves to upgrade our living conditions. The status of our chapter, which is in HPL, remains uncertain and we need to make plans for improvement. I am opposed to one acre homesites for 1934 residents--payment of benefits should be allowed for those willing to move if necessary. In regard to McCain's amendments, I know that many young Navajo people do need housing. Many reside in Tuba City either with other family or relatives. rented residence, or others go without. The elderly people do have their homes but they are dilapidated, unsanitary and substandard. I request that housing addition and new housing construction be added to the amendments. I suggest that the Checkerboard area which consist of Navajo Tribally purchased lands be excluded from 1934 laws and litigation--that developments be permissible. I further recommend that employment be created for HPL and 1934 areas.

10. Evelyn Flatrock - Coalmine Mesa Chapter (1934):

I have attended the Public Hearing at Teesto and have developed an understanding of the proposed Bill. I was born and raised in HPL area but moved into the 1934 area. My family members have been relocated, but when I sought certification for benefits, I was denied. I then informed NHIRC that they not request me to move from where I presently am located. I am totally opposed to appropriation of funds for relocation. I support that NHIRC commissioners be removed and replaced. I oppose one acre homesites for 1934 residents. I understand that BIA employees are not allowed to relocate and would like more information. My family has livestock which we raise. I am totally opposed to the proposed appropriations, but want improved living conditions.

11. Nettie Nez - Coalmine Mesa Chapter (1934):

I want to speak of my life and my livelihood. I have many children and grandchildren who are without homes. Most of them reside in Tuba City for employment and educational reasons. When my children and grandchildren come to visit me on weekends, they have no place to stay the night except in overcrowded conditions. Yesterday, my children and grandchildren (32 in number) came for a family reunion. They couldn't stay because I didn't have a place for them. The land issue is a constant bother--sometimes I can't sleep thinking that times are getting harder. I think about why I am, being an elderly, more important than my children. I have a home, even though it is in poor state, and my children do not. The HPL residents have suffered alot. Many of my close friends and relatives have been impacted by relocation. My children have livestock of their own which they cannot tend daily due to lack of a place to stay. We are in need of water--our resources are currently inoperable and our main source is situated in HPL and cannot be extended into 1934 area. We want homes for our children. We want total lifting of the freeze. Because of the freeze, our children have no homes, we need water, and cannot grow our own food. We have become dependent upon means we do not have to work for--buying grocaries, etc.

[illegible] I have a grave concern with new housing. I am uneducated and cannot read. I support the effort and comments of our Veterans. My brothers have served in armed forces and 3 of my children have also. If our Veterans have to be forced to move from their land and homes, then the Federal Government should not draft our youth. I am opposed to one acre homesites in 1934. We have inherited livestock ownership from our forebears and that is currently my family's primary subsistence. The Hopis did not give us our livestock so why should we do without. I also want to express my concerns on the mockery of our traditional practices as depicted in Song and Dance activities.

13. Selena W. Smith - Coalmine Mesa Chapter (HPL):

Mrs. Smith clarified Senate Bill 1236 and the proposed amendments in relation to P.L. 93-531. The NHIRC and BIA proposal contain harsh items which would increase the hardships currently being experienced by the people. I do not want the people to suffer any more than they already have. I want the elderly to at least have an improved livelihood at some point in their lives since they have suffered and been denied happiness for many years. I oppose the NHIRC and BIA proposal but ask for possible consideration of adding rehabilitation funds for our people who have moved to the New Lands so that public service facilities can be made available. NHIRC and BIA have made many promises to HPL residents and have not followed through on a majority of them. I support McCain's amendments with authorization for new housing construction in 1934 to alleviate existing overcrowded conditions. I am from HPL, currently living in Tuba City for employment and educational reasons, but have not been relocated. My relocation process has been complicated by the varied changes in procedures and rules. Passing of the Senate Bill with amendments would have a slight improvement on present conditions, but we should still support comprehensive solution--which I understand is a separate issue aside from this.

14. William Long Reed - Tuba City Chapter:

Why is it that these issues are not worked on in a timely manner--we should be notified at least 30 days prior of important matters as this. I just heard yesterday about this hearing. The Veterans from my chapter have united efforts to oppose any relocation from 1934 area. The young people are also affected by these land issues and should be more involved in sharing their views and comments.

15. Cecil Nez - Coalmine Mesa Chapter (HPL):

I support the comments of Harry Nez and Selena Smith. My mother and family members have relocated but I haven't. Last year, my residence was set afire and all my personal property was lost in this mishap. The offer of $40,000 Buy-Out is a way of the Federal Government taking back $25,000 of what I am rightly eligible for. I support the amendments of Senator McCain.

16. Harry Manygoats - Coalmine Mesa Chapter (1934):

A majority of today's comments are opposed to NHIRC/BIA Proposal, so I will not dwell on that. I support McCain's Amendments but would like to recommend

additions to such: economic development should be authorized in 1934 without Hopi approval; commissioner's office should be established on or near the affected areas rather than in Flagstaff which is distant to all affected; periodic update on changes to regulations and procedures are needed; etc. How will the attorney fees be limited--that is my only question. I also urge that everyone express appreciation to Senator McCain for his efforts to alleviate our problems.

17. Harry Goldtooth - Coalmine Mesa Chapter (1934):

If the land is to remain in freeze status, then we cannot discuss new developments. The freeze should be lifted prior to consideration of developments. I am opposed to NHIRC/BIA Proposal. I agree with the reduction of commissioners but that office be established amid the affected area, possibly Tuba City. I want to ask on "Removing BIA"--does that mean getting away from BIA trust responsibility? (Response made by Mr. Biltah). I recommend that NHIRC reporting timeline be set at monthly or bi-monthly. I understand that "Some development...." would mean economic development, increased grazing units, etc. I have children and 14 grandchildren for whom I need housing, therefore, I support the quest for adding new housing construction to the amendments.

18. Earl Nez - Coalmine Mesa Chapter (HPL Relocatee):

It seems to me that we are saying we want the Relocation Commission to continue working to relocate us. Then on #5 of McCain's amendments, we are saying that we do not want the freeze lifted in 1934. We should not ask for development until the freeze is lifted. In a sense, we are saying that P.L. 93-531 continue to be the law. Whatever happened to Chairman MacDonald's campaign promise on repealing the law. He might be working on repeal and here we want relocation to continue. I work for a construction firm which does construction for the relocatees. The relocatee's appraisal for improvements is no longer added to the benefits; it is used first, then additional amount up to eligibility limit is added to it. This is a change NHIRC has made and not all relocatees are aware of it.

Recorded by:

Selena W. Smith
Chapter Secretary
Coalmine Mesa Chapter

NOTE: The public hearing was conducted in the Navajo language since that is the predominant language of the majority in attendance.

ATTORNEY GENERAL- 12027885892[illegible]

COALMINE MESA CHAPTER 10 APRIL 1988

SENATE BILL 1236
PUBLIC HEARING
SIGN IN (Speakers)

1 GLENMORE & EGATE
2. Danny Blackgoat
3. JOE DAVIS
4. ~~Harry Nez~~
5. Evelyn Arthur
6 ~~Daisy Begay~~
7. David Chiss'e
8 Andrew Begay
9 Ned Nez
10 Evelyn Flattrock
11 Nettie Nez
12 Edith Billy
13 Selena W. Smith
14 [redacted] → Wilson Ivy Nez
15 ~~Ben~~ Cecil Nez
16 ~~Harry~~ Nancy Goat
17 Harry Goldtooth
18 Earl Nez
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27

RESOLUTION

of the

TEESTO CHAPTER/COMMUNITY

of TEESTO, NAVAJO NATION, ARIZONA

OPPOSING THE PROPOSED AMENDMENTS TO SENATE BILL 1236 SUBMITTED BY THE BUREAU OF INDIAN AFFAIRS AND THE NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

WHEREAS:

1. The Teesto Chapter/Community is a certified and authorized Chapter of the Navajo Nation to advocate for and in the best interest of its constituents, pertinent to their health, safety, and general well-being; and

2. A majority of the members of this community are very much concerned, and adversely affected by Public Law 93-531 as amended; and

3. Senator Daniel K. Inouye has introduced a Reauthorization Bill, S.B. 1236, which would appropriate $30 million yearly for the completion of relocation by the Navajo and Hopi Indian Relocation Commission (NHIRC) and the Bureau of Indian Affairs (BIA); and

4. Senator John McCain has proposed Amendments to S.B. 1236 which imposed safeguards and limits, and addresses the issues of BIA and NHIRC responsibility and accountability; and

5. The Federal Government's relocation enumeration project of the years 1977 and later is incomplete because it does not account for the children of HPL residents; and

6. The interests of Navajo Veterans, who fought to save the homeland they are now being evicted from, were not addressed in proposals to amend S.B. 1236; and

7. Section 17(b) of Public Law 93-531 as amended, exempting federal employees from relocation, has not been implemented in any rational or helpful way, and

8. Teesto Chapter/Community has always supported and continues to encourage land exchanges to resolve land dispute issues within its Chapter; and

9. Some residents of the HPL have filed a class action suit declaring relocation a violation of their First Amendment Rights and Freedom of Religion.

NOW, THEREFORE LET IT BE RESOLVED:

1. The Teesto Chapter/Community strongly opposes BIA's and NHIRC's proposed amendments to S.B. 1236 because of their past failures and their insensitive treatment of the Navajo people; and

2. The Teesto Chapter/Community supports and encourages the adoption of the Amendments to S.B. 1236 as proposed by Senator John McCain; and

3. The Teesto Chapter/Community requests that a proper enumeration of HPL residents be made that includes the children of HPL residents and residents who were not previously counted because of employment, hospitalization, military service, or other reasons; and

4. The Teesto Chapter/Community further requests and calls for recognition of Navajo veterans in matters related to the land dispute; and

5. The Teesto Chapter/Community further requests and calls for a reexamination of Section 17(b) of Public Law 93-531 as amended so that this Section protects the interests of the children of government employees; and

6. The Teesto Chapter/Community continues to call for land exchanges in its former Chapter Area; and

7. The Teesto Chapter/Community supports the cry for recognition, through lawsuit or other means, of the right to Freedom of Religion of Navajos who are subject to relocation against their will and religious beliefs.

CERTIFICATION

We hereby certify that the foregoing resolution was duly considered at a duly called Chapter Meeting at TEESTO, Navajo Nation, Arizona, at which a quorum was present and that the same was passed by a vote of 27 in favor and 0 opposed, this 11th day of April, 1988.

Chapter President

Chapter Vice President

Council Delegate

Chapter Secretary

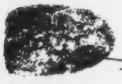
PETITION OPPOSING THE AMENDMENTS PROPOSED BY THE B.I.A. AND RELOCATION COMMISSION

I, the undersigned recieved an explanation of the amendments proposed by the B.I.A. and the Relocation Commission by my signature and/or mark I wish to indicate my opposition tothose proposals especially the 1-acre H.P.L. Homesite Lwease and the $40,000 cash buy out proposals:

NAME/SIGNATURE	DATE	ADDRESS	WITNESS
Kathrine Smith	4/7/88	PO Box #259 Oraibi, Az 86039	
J.B. Benally	4/7/88	P.O. Box #733 Holbrook, Az 86030	
Lee Benally	4/7/88	Big Mtn Dine Nation, Az	
Rudy Benallie	4/7/88	Big Mountain, AZ	
Wilkie Blackbird	4/7/88	" " "	
Jarell Ashkie	4/7/88	Big Mountain, AZ	
Joel Ashkie	4/7/88	Big Mountain, AZ	
Augustine Ashkie	4/7/88	Big Mountain, Az	
Nathan Tsosie	4/7/88	Big Mountain Az	
Dawson Ashkie	4/7/88	Big Mountain Az	
Ellen B Bedonie	4/7/88	Big Mountain Az	
Thomas B Bedonie	4/7/88	Big Mountain Az	
Helen B Bedonie	4/7/88	Big Mountain Az	
Alice B Yazzie	4/7/88	Big Mountain Az	
Nancy Ashkie	4/7/88	Big Mountain Az	
MAYSHAW	"	"	PI
Alice R Benally		P.O. Box #171 Ky Kotsomovi, Ariz	
Celia Tsosie Herbert			
Melvin K Bedonie		Big Mountain Az 86039	
Helen Bedonie	Big Mt Ariz		
Peter Yazzie		P.O. Box 35 Ky Kotsomovi, Ariz	
Bennie Bedonie			
Lorenzo T. Bedonie		P.O. Box 279 Ky Kotsomovi, AZ 86039	
X Mary R. Bedonie		P.O. Box 35 Ky Kotsomovi, AZ 86039	
Benjamin Yazzie	Box 357	[illegible] AZ 86510	

PETITION OPPOSING THE AMENDMENTS PROPOSED BY THE B.I.A. AND RELOCATION COMMISSION

I, the undersigned recieved an explanation of the amendments proposed by the B.I.A. and the Relocation Commission by my signature and/or mark I wish to indicate my opposition tothose proposals especially the 1-acre H.P.L. Homesite Lwease and the $40,000 cash buy out proposals:

NAME/SIGNATURE	DATE	ADDRESS	WITNESS
Eugene BeDonie	4/7/88	Box 35 Oraibi Az	
Roy R. Smith	4/7/88	P.O. Box 2075 Kayenta, Az 86033	
 Pauline Whitesinger	4/7/88	Box 35 Oraibi AZ	
Abbie B. Baker	4/7/88	Box 35 Oraibi Az	
~~J. Kak~~ Jamie Kaley	4/7/88	Box 35 Oraibi, Az	
John Little		P.O. Box 275 Kayenta, Az 86033	
Bilson Little	"	" "	
Dill Little	"	" "	
Pamela L. Hale	"	" "	
[illegible] John		51 calle Pinon Gallup, New Mexico	
Mac Tso	4/7/88	Box 422 Oraibi, Az 86039	
Lorraine Herder	4/7/88	Box 197, Kykotsmovi, Az 86039	
Dorothy Su Deel	4/7/88	Box 35 Oraibi Az 86039	
Connie Hamana	4/7/88	Box 35 Oraibi Az 86039	

Petition Opposing the Amendments Proposed by the BIA AND Relocation Commission

I, the undersigned received an explanation of the amendments proposed by the BIA and the Relocation Commission and by my signature and/or mark wish to indicate my opposition to those proposals especially the 1-acre homesite lease and the $40,000 buy-out proposals:

SIGNATURE	DATE	ADDRESS
Orville Dunn	4-6-88	Box 307 Oraibi, Az 86039
Slim Blakeddy	4-6-88	Dinnebito, T.P.
Jimmie Lee	4688	Dinnebito T.P.
Asdzan Badoni	4-6-88	Dinnebito T.P
Angelireta Young	4-6-88	" "
Derek Young	4-6-88	" "
Rebecca Lee	4-6-88	" "
Bessie Pahe	4-6-88	Dinnebito T.P.
Mary Pahi	4/6/88	P.O. Box 35 Kykotsmovi, Az 86039
Carla K. Francis	4/6/88	Box # 35 Oraibi, Az. 86039
effie Begay	4/6/88	P.O. Box 35 Oraibi, Az 86039
Lyssie H. Lyssie	4/6/88	P.O. Box 35 Oraibi, Az 86039
Glenna M. Goldtooth	4-6-88	Box 35 Oraibi, Az. 86039
Livingston Lez	4-6-88	Box 431 Oraibi, Az. 86039
Sonny Benally		DO. Box 35 Oraibi, Az 86039
Johnny Eagle Tail	4-6-88	Box, 367 Oraibi Az, -86039-
Laverne Begay	4-6-88	Box # 531 Kykotsmovi Az 86039
Irene Lazzie (R.T.P.)	4-6-88	Box # 531 Kykotsmovi Az 86039
Willie Begay	4-6-88	Box # 243 Kykotsmovi 86039
Vernon Shorty	4-6-88	Box 531 Kykotsmovi 86039
Patricia Shorty	4688	" " "
Spencer Begay		Box 243 Kykotsmovi, Az.
Willie Begay Jr		" "
Darrell Shorty		Box # 531 Kykotsmovi Az 86039 4.6.88
*Edward T[illegible]		P.O. Box # 35
Bah [redacted]		" "

PETITION OPPOSING THE AMENDMENTS PROPOSED BY THE B.I.A. AND RELOCATION COMMISSION

I, the undersigned received an explanation of the amendments proposed by the B.I.A. and the Relocation Commission by my signature and/or mark I wish to indicate my opposition to those proposals especially the 1-acre H.P.L. Homesite Lwease and the $40,000 cash buy out proposals;

NAME/SIGNATURE	DATE	ADDRESS	WITNESS
C. Blackrock		P.O Box 1767 Kayenta Az	
Kee Watchman		PO Box 35 Oraibi Az 86039	
Eddie Gigmer		P.O. Box 35 Oraibi Az. 86039	
Oscar Whitehair		P.O. Box 35 Oraibi, Az 86039	
Samuel Whitehair		P.O. " " " "	
Phillip D Elsisi		Dennibito P.T. Oraibi Az.	
Hosteen L Begay		Dennibito P.T. Oraibi Az	
Hosteen N. Begay		Dinnebito T.P. Oraibi AZ	
Jon H. Begaye		Dinnebito T.P. Oraibi, AZ.	
David J. Herbert		Dennibito T.P. Oraibi, AZ	
Julia J. Herbert			
Dsie Elsisi		Dennibito T.P. Oraibi Az	
Fannie N. Nez		Big Mtn	
Joiceen H. Holy		" 4	
Roberta Blackgoat		" "	
Lewis Bynum			
Louise Yazzie			
Clitsi Bitsi		Dinnebito T.P. Oraibi, AZ 86039	
Mary Lou Blackrock		" "	
Susan J. Begay		PO Box 1382 Kaibeto, AZ 86053	
Naize Begay		Dinnebito T.P. Oraibi, AZ 86039	
Steven Begay		Dinnebito T.P. Oraibi AZ 86039	
Bahe Begay		Dinnebito T.P. Oraibi, AZ 86039	
Etta Begay		Dinnebito T.P. Oraibi, AZ 86039	
Woodrow H. Pahi		Page Az 86040	
Betty Pahi		Phoenix Az	
Elwood H. Pahi		Holbrook Az 86025	
[illegible] Yazzy		Dinnebito Az Oraibi, Az	
[illegible] alice Yazzy		Dinnebito Oraibi Az 86039	

PETITION OPPOSING THE AMENDMENTS PROPOSED BY THE B.I.A. AND RELOCATION COMMISSION

I, the undersigned received an explanation of the amendments proposed by the B.I.A. and the Relocation Commission by my signature and/or mark I wish to indicate my opposition to those proposals especially the 1-acre H.P.L. Homesite Lease and the $40,000 cash buy-out proposals:

NAME/SIGNATURE:	DATE:	ADDRESS:	WITNESS:
X Bertha Yazzie	4-4-88	Box 163 Oraibi	C K Nelson
X Roy Lee Wall	4-4-88	Pox 685 Second Mesa	
Paul D Clark	4-4-88	Kayenta P.O. Box 1547	
Bessie e vyposta		Box 1728 TC Arizona	
David Benson Sr		Teec Chapter Office Window Rock AZ 86047	
Melvin Williams		White Cone Chapter Gen. Del. Window Rock AZ 86515	
Lee Antone		Teesto chapter Window Rock AZ	
Wilson C Attakai	"	" " "	
Steven Bahe	04-04-88	P.O. Box 726 Window	
James Francis	" " "	Teesto Chapter Window Rock AZ	
Veronica Mills		Teesto Chapter	
Harry Mc	4-6-88	Coal Mine	
[illegible]	4/6/88	Box 41, Kykotsmovi, Az 86039	
[illegible]	4/6/88	Box 35 Dennehotso T.P. Oraibi	
Joe Lee Begay	4-6-88	Box 28, Oraibi, Az. 86054	
X David Begaye	4-6-88	Tuba City T.P. Tuba City, AZ	
[illegible]		Tuba City Box 74 44	
[illegible]			
[illegible]		Dennehotso T.P. Oraibi	
X Betty James	4-6-88	PO Box 127 Tuba City AZ 86045	
[illegible]	4/6/88	Dennehotso T.P. Oraibi, AZ	
Bessie M. Begay	4/6/88	" " " "	
[illegible]	4/6/88	Box 1883 Tuba City, Az [illegible]	
[illegible]	4/6/88	Box 2235 Tuba City, Az 86045	
[illegible]	4/6/88	Box 2235 Tuba City, Az 86045	
[illegible]	4/6/88	Box 533 Oraibi Az 86039	
Delia N. [illegible]	4/6/88	Box 1883 Tuba City Az. 86045	
[illegible]	4/6/88	Coal Mine	
[illegible]		Coal Mine	
Johnnie C Johnnie	4/6/88		
Ramon Johnnie	4/6/88		
Jerry Bradley	4-6-88		
Marcella Bradley	4-6-88		
[illegible]	4-6-88	Coal Mine	
[illegible]	4-6-88	Coal Mine	
[illegible]	4-6-88	Coal Mine	

PETITION OPPOSING THE AMENDMENTS PROPOSED BY THE B.I.A. AND RELOCATION COMMISSION

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NAME/SIGNATURE:	DATE:	ADDRESS:	WITNESS:
Kathleen Tully	4/4/88	Teesto Chapter, Winslow AZ.	
[illegible]	4/4/88	P.O. Box 675 Chinle Az 86503	
Hoopie Schultz	4/4/88	Tolani Lake Chapter Winslow Az	
Richard, George	4/4/88	Tuba City Chapter Tuba City Az.	
Harry Nelson	4/4/88	Teesto Chapter Winslow	
Elder Clark	4-4-88	Teesto Chapter Winslow Az.	
Wilbert Jay	4/4/88	Hardrock Chapter, Hardrock AZ	
Mae W. Tso	4/4/88	Hardrock Chapter, Hardrock, Az	
Alvin Clinton	4/4/88	Teesto Chapter Winslow Az.	
marie clark	4/4/88	" " " "	
Albert Francisco	4/4/88	" " " "	
Edith P. Billy	4/4/88	" " " "	
Evelyn F Tocak	4/4/88		
Sadie Yazzie	4-4-88		
Harry Clark	4-4-88	Coal Mine Mesa Tuba City Az.	
Geraldine Clark	4-4-88	P.O. Box 1320 - Winslow Az	
David Clark	4-4-88	" " " "	
Joe Yazzie	4-4-88	Teesto Chapter, Keams Canyon Az.	
NORA YAZZIE			
mountain sheep 37			
ALVIN J. BABE	4-4-54	TEESTO, ARIZONA WINSLOW, Az. 86047	
Katherine K Begay	4-4-88	Teesto Chapter, Winslow	
Verna M. Wilson	4-4-88	Teesto Chapter, Winslow, Az.	
Harriet B Wilson	4-4-88	Teesto Chapter, Winslow, Az	
Elanor Miles	4-4-88	Teesto Chapter, Winslow, Az	
Emma Nelson	4-4-88	Teesto Chapter, Winslow, Az.	
Roy L. Wilson	"	"	
Eva L. Wilson	"	"	
Barbara Wilson	"	"	
Phillip B Yazzie	"	"	
Geneva Yazzie	"	"	
Roger L. Attakai	"	" Winslow, Az. 86047	
Joel L Attakai	"	"	
Archie Barton	"	"	
Jane Nelson	4-4-88	Teesto Chapter - Winslow, Ariz 86047	
Nellie Lewis	4-4-88	Teesto Chapter - Winslow, Ariz 86047	
Ray Lewis	4-4-88	Teesto Chapter - Winslow, Ariz 86047	

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NAME/SIGNATURE:	DATE:	ADDRESS:	WITNESS:
Lucien Yazzie	4/4/1988	Leupp Co-op. Store	
Clifford McClain	4/4/1988	Tolani Lake Chapter Winslow Az 86047	
Ashee Begay	4-4-88	P.O. Box 553 (Winslow) Az. 86047	
Peter F Nez	4-4-88	Sec. Dalkai Sch. Winslow, Az 86047	
Elmer Yazzie	4-4-88	Tolani Lake Chapter	Leupp
Thomas Singleton	4/4/88	P.O. Box 1284 Show Low AZ 85554	
Frances M. Cole	4/4/88	Teesto Chapter	
Emma Lou Clark	4/4/88	"	"
Shirley Williams	4/4/88	"	"
Lucien Begay	4/4/88	" Keams Canyon AZ	P.O. Box 1126
Mable Yazzie	4/4/88	Keams Canyon AZ 86034	
Tom White	4-4-88	P.O. Box 352 Orraibi, Az	
Ellen White	4-4-88	P.O. Box 352 Oraibi, Az.	
Lee Tatchemon	4-4-88	P.O. Box 35 Oraibi Az	
Teddy W. Begay	4-4-88	P.O. Box 893 Kayenta Ariz 86033	
Pinky A. Riggs	4-4-88	Leupp Ariz.	
Sally Chee	4-4-88	BOX 135 - SORAIBI AZ	
Dorothy Lomatie	4-4-88	Polacca Day Sch. Box 1392	
Phillip R. Yazz	4/4/88	White Cone Orig. Box 1670	
Vita B Yee	4-4-88	Second Spring Dr.	5464
Glenn Yazzie	4-4-88	Oraibi Ariz. Box 88	5741
Marie French	4-4-88	P.O. Box 722 Winslow, Az. 86047	
Dana Bradley	4-4-88		
Toni Anne Kee	4/4/88	P.O. Box 303 Oraibi, Az 86039	
Mary Chapter	4/4/88	Teesto Chapter House Winslow Az 86047	
Justin Lewis	4/4/88	Teesto Chapter House Winslow Az	
Mary Ann Lewis	4/4/88	Teesto chapter House Winslow Az	
Mellerent Kamuks		Teesto Chapter House Winslow Az	
James Francis	4-4-88	Teesto Chapter House Winslow Az	
Arnold Paddock	4/4/88	Teesto Chapter House Winslow Az 86047	
Jenny B Paddock	4/4/88	Teesto Chapter House Winslow Az 86047	
Marylen Gleason	4/4/88	Teesto Chapter House Winslow Az 86047	
Judi Kayonnie	4/4/88	Box 112 Star Route Winslow Az 86047	
Helen Rose Lewis	4/4/88	Teesto Chapter House Winslow Az. 86047	
Dennis B. Lewis	4/4/88	Teesto Chapter House Winslow Az. 86047	

Mabel Yazzie 4/4/88	Jeddito, ~~Ariz~~
Mary Katherine Yazzie 4/4/88	Jeddito Arizona
Louise Yazzie 4/4/88	Jeddito Az
Nora Barton 4/4/88	Teesto, Az
Emma Bake 4/0 88	Teesto C to
Dennis P. Lewis 4/4/88	Teesto C. H.
Tom Bake 4/4/88	Teesto C.H.
Delbert Sake 4/4/88	Teesto C. H.
Neil Nibo 4/4/88	Teesto C H, Ariz
Jack Clark 4/4/88	Teesto C H Ariz
Louise Attakai 4/4/88	Teesto C.H. Az
Clara Attakai 4/4/88	Teesto Chap House
Wesley Yazzie 4/4/88	Teesto Chapter, Az
Shorty Attakai 4/4/88	Teesto Chapter, Az
PEGBAH YAZZIE 04/04/88	Teesto Chapter
Etta E. Yazzie 04/04/88	Teesto Chapter
Verlie R. Yazzie 04/04/88	Teesto Chapter Az
Lynda Dann	Tea-ya-Teh Az.
Andy Dann	Tea-ya-Teh Az.
Lorenzo Bedonie 4/4/88	Hardrock chapter
Phillip Kleinson 4-4-88	White corner Az.
Hyfert Bitsui	
James Begay	Teesto chapter
Lorena Helmood	Teesto chapter
Rose Dz	Teesto Chapter

PETITION OPPOSING THE AMENDMENTS PROPOSED BY THE B.I.A. AND RELOCATION COMMISSION

I. the undersigned received an explanation of the amendments proposed by the B.I.A. and the Relocation Commission by my signature and/or mark I wish to indicate my opposition to those proposals especially the 1-acre H.P.L. Homesite Lease and the $40,000 cash buy-out proposals:

NAME/SIGNATURE:	DATE:	ADDRESS:	WITNESS:
Bennie Alex Nez	4-04-88	Po Box 2502 Tc 86045	
Zeco Nez	4-04-88	" " " " " "	
Connie Alex	4-04-88	P.O. Bo 345 Winslow Az 86047	
Sonia Kanuho	4-04-88	" " " " " "	
Lawrence Manygoats	4-04-88	P.O. Box 1712 Tuba City, AZ 86045	
Betsy Manygoats	4-04-88	" " " " " "	
Fay Lee Kanuho	4/21/64	PO Box 2294 Chinle Ariz 86503	
Valencia Kanuho	12/8/65	" "	
Rose D Ng	4/4/88	Teesto Chapter House Winslow Ariz	
Nettie Attakai	4/4/88	Teesto Chapter House Winslow Az	
Melvin Nez	4/4/1988	Tuesta Chapter House Winslow, Az	
Tuzi Nelson	4/4/88	Teesto Chapter, Winslow Ariz. 86047	
David J. Tsosie	4/4/88	P.O. Box #1007, Kearns Canyon, AZ 86034	
Bill H. Dalton	4-4-88	600 W. Lee (e) Winslow, Ariz 86047	
Hilda Attakai	4-5-88	Teesto Chapter Winslow Az	
Andrew Attakai	4-5-88	Teesto chapter Winslow Az	
Louis Smith	4-5-88	Teesto Chapter Winslow Az	
Teddy Dever	4-5-88	Smoke Signal Chinle Az	
Aurelia A. Jr	4-5-88	Sandspring, Az	
Dennis Jr	"	"	
Darilyn Jr	"	"	
Nellie Benjasper	4-5-88	Red Lake Tonalea Az.	
Ruby Begay	4-5-88	Tonalea Arizona	
Ruby Ben	4-5-88	Tonalea Az	
Jennine Ben		Tonalea az	
Dora Begaye		Tonalea az	
Betty Ben		Tonalea az	
Richard Johnson	4-05-88	P.O. Box 78 Cameron Az 8620	
Betty A. Johnson	4-05-88	P.O. Box 78 Cameron Az 8620	
Luther McCabe		(Sand Spring) Tolani Lake	
[illegible]		([illegible])	
Emma Nez Begay	4-6-88	Coal Mine	
Sageny Begay	4-6-88	Coal mine	
Tsosie Yazzie	4-6-88		
Glenna Yazzie	4-6-88		
Dan R Yazzie	4/6/88		

STATEMENT OF
PETER MacDONALD, CHAIRMAN
NAVAJO TRIBAL COUNCIL

ON SENATE BILL 1236, AS AMENDED
BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
APRIL 12, 1988

I would like now to comment on the amendments proposed by Sen. McCain and by the Administration.

Senator McCain, as I stated at the December 9 hearing, the Navajo Nation supports your efforts to make the Relocation Commission and BIA more accountable and responsive to the needs of the Navajo families that are faced with the heart-wrenching trauma we know as "Relocation." We are encouraged to see that some of the issues we have continued to raise over the years are finally being addressed. But as I also stated before, all the issues that have arisen as a result of these land disputes must be comprehensively resolved so that we all can focus our energies and resources in a more productive way.

One of Senator McCain's amendments would establish a Rehabilitation Fund using income from the Paragon Ranch for the benefit of Navajo relocatees. Relocation is a federal program mandated by the Congress and imposed on the Navajo people. This program carries with it federal promises and responsibilities of enormous magnitude. The Navajo Nation remains ready and willing to assist in the planning and decision making that must accompany this program, but it must remain clear that the federal government must satisfy its obligations under the law.

As we stated in December, we support Senator McCain's acknowledgement that the situation in the 1934 area, the so-called Bennett Freeze, must be changed. I know you and your staff have visited that area and are aware of the magnitude of the problems that exist. Since 1966, 10,000 Navajos have been forced by the Federal Government to live in appalling conditions. Your amendments would permit limited changes regarding infrastructure improvements. However, they do not address the single most pressing need facing these families today -- adequate housing. It is true that this matter is now before the courts, where I might add, it has been since 1974. With a few strokes of a pen you could alleviate this tragic situation, yet protect the rights of the parties now before the courts.

Turning now to the amendments proposed by the Administration. Although we are happy that the Administration has finally recognized the necessity of a comprehensive settlement, its proposals are woefully inadequate. Both the time it took to develop the proposal and its substance show once again the inability of the BIA and Relocation Commission to properly serve the relocatees.

This Committee held hearings on this bill over four months ago. At that time the Administration refused to comment, even personally, on Senator McCain's proposals. At the Administration's request, the hearing record was held open until January 15 so they would have time to submit comments. During that period, the Navajo Nation filed testimony laying out in detail the problems we have experienced with federal planning and execution of relocation. The Hopi Tribe also met the deadline. January 15th however, came and went without a word from the Administration. Not until the last few weeks has the Administration come forward with its proposals.

If the Administration's proposal actually addressed the issues, perhaps it would have been worth the wait. However, as with so many other actions taken by the BIA and Relocation Commission in the past, this proposal serves the convenience of the bureaucrats at the expense of Navajo families.

Four provisions illustrate my point. First, the Administrative proposed to be given authority to impound from tribal trust funds amounts declared by the BIA to be owed by one tribe to another for rental fees for use of partitioned land by families still living there. Let me tell you that the Navajo Nation in 1985 paid $460,000 to the Hopi Tribe, while reserving our right to appeal the determination of the amount owed. According to our appraisers, that amount exceeds what we actually owe by nearly $100,000. We are now appealing the Interior Department's determination. (We oppose allowing the Department to impound this money from the trust fund, before or after the appeals process is completed. Trust funds have never been subject to such an impoundment, and it would set a dangerous precedent for all tribal governments were we to allow it in this case.

Second, the Administration has proposed that Navajo families who cannot leave the Hopi Partitioned Lands because of their religious beliefs or for other reasons be given a one-acre homesite lease with no grazing rights. One acre of desert land. How does the Administration expect these people to eat? Without grazing rights they would not be able to survive. Many are elderly. There are no jobs available in the area.

At one time, many years ago, Navajo families had an average of 5,000 acres to graze. Then, through government livestock reductions, they had only 1,000 acres. Now, the Administration heralds the allocation of <u>one acre</u> to families. (Let we put it to you this way: say you lived in a house with a bedroom, a living room, a kitchen, and so forth. Then, your living room and bedroom are taken away. Now, someone comes along and says, "you don't need all these rooms - you can live in the closet."

The Administration proposes to put these people in a closet.

Proposing at this late date that Navajos remaining at their traditional homes receive one-acre homesites illustrates once again the incredible lack of understanding that the Relocation Commission and the BIA have of the Navajo people, their culture, religious beliefs and means of survival.

This is a direct assault on their very way of life, on their religion, their livelihood.

Third, the Administration proposes a $40,000 cash buyout for people who have moved but not yet received benefits -- that is, the refugees. The Administration should be ashamed to make such a proposal. For the bureaucrats, that would be convenient. The cost of relocation is now approximately $100,000 per family, so this proposal would produce a savings of $60,000 per household. For my people, it would be disastrous.

This is a cruel thing to offer a desperate people. When a family accepts this temptation, they are then left with nothing; as far as the government is concerned, they are "finished," out of the system. But in fact, the problems of these people will have only just begun.

In the early years of the relocation program many Navajo families were moved off the Reservation. They were approached by unscrupulous business people who convinced them to mortgage their relocation homes for money. Having no jobs they were unable to repay the money and consequently lost everything. With a cash buyout, the Administration is proposing a return to the days when Indians got blankets for their lands and minerals.

Fourth, the Administration plays with figures regarding livestock and the carrying capacity of the New Lands. The relocatee families were promised 100-sheep units. This promise has not been honored. In fact, 100-sheep units are less than one third of the level required for subsistence for a family of four.

We have provided this Committee with many other examples of the Administration's inadequacy in our written testimony. The list is too long to read here. We have also written our objections to the Administration's other new proposals and have submitted them for the record today.

In summary, I believe that the structural changes Senator McCain has proposed for the federal relocation agencies must be adopted and that the individuals currently responsible for relocation must be replaced. We support a single commissioner who is independent of the BIA, but reports to the

Secretary of the Interior. We believe the new commissioner should have budget authority from the Congress that is separate from the rest of the Department of Interior appropriations.

Senator McCain has proposed amendments to provide for the new Commissioner to make legislative recommendations within six months. We support that provision. I hear the administration and the Congress have stated that there will be no "forced" relocation, that all the relocation that has taken place has been voluntary.

We hear the explanation that relocation is "voluntary." Lets be realistic, ladies and gentlemen. What is voluntary about relocation when the government comes in and takes your sheep? What is voluntary about a situation wherein you are told, "You cannot build a house. You cannot have a flush toilet or septic tank. You cannot lay electric lines or make other improvements. You cannot do this, you cannot do that." What is voluntary about a situation in which an unsuspecting population is continually and persistently harassed and intimidated by "counselors" from the government, and by representatives of a neighboring tribal government?

I have brought with me today two traditional Navajos from the affected area. With the Committee's permission, Mr. Clarence Blackrock, who is from Cactus Valley, in the HPL, would like to say a few words, and submit a statement for the record, with your permission.

[CLARENCE BLACKROCK's STATEMENT]

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Mr. Chairman, we must step outside our comfortable daily lives and think hard to imagine the degree of fear that this kind of unrelenting pressure brings to the minds and hearts of these people. What is voluntary in such a situation?

I have heard it said that Congress cannot allow Navajo people to stay on the HPL. I ask, why not? In every other Indian land claim that Congress and the courts have resolved in recent history, the Indian claimants have received money as compensation. Current residents of Alaska, Maine, and Florida have not been told, "you must move." In those cases, laws were passed specifically to clear property titles for non-Indian current residents with regard to how recently they lived there. Only the Navajo people have been told they must move and had their lives restricted to such an extent that many have had no other choice. I have to ask, if the Hopi had claimed Flagstaff or Winslow or Phoenix, would Congress have relocated the current residents of those cities? We all know the answer is no.

The courts in 1962 determined that both tribes have an equal and undivided interest in the JUA. First, in recognition of that, we have offered to the Hopi's compensation that is better than money. We have offered land -- good grazing land with a much higher economic development potential than the lands we would ask to be returned. This is the type of solution that the new Commissioner and Congress must consider in future legislation. The constitutional and human rights of Navajos who cannot move from the HPL must be respected and addressed. Human rights must take precedence over property rights. Those Navajo families cannot be forced to move.

Second, the many lawsuits pending between the tribes must be resolved, so that both Tribes and the federal government can look to the future and not to the past.

Third, the United States must carry through with its promise of relocation benefits for the refugees who have moved and not received benefits. They deserve the decent housing and other benefits and services they were promised. In the meantime the Navajo Nation is attempting -- as much as possible with limited resources that must also serve other needy families -- to meet their emergency financial, legal and counseling needs. But the United States cannot turn its back on these people.

Fourth, the long-term needs of the Navajos who have suffered from relocation must be addressed. The 1974 Act promised roads, schools, health and community facilities. The Statutory Freezes must be lifted and rehabilitation needs in that area must be funded. The Navajo Nation stands ready to assist in those projects, but we cannot do it alone.

Mr. Chairman, what is this dispute really all about? Why are we here? What are we fighting about? As I approach the conclusion of my statement, I want to address some broad misconceptions and untruths that have been said about this dispute. This is not a dispute between two tribal governments. This is not a dispute in which the Navajo Nation somehow accrues greater power or in some way enriches itself; quite the contrary. It is a dispute which is a drain on my people.

This is not a fight between tribal leaders - it has nothing to do with individual ego or personal gain. I say to you with the utmost conviction and from the bottom of my heart, that this is truly a dispute between innocent traditional rural families, who have lived on the JUA for generations, and the United States Government. The government has undertaken a massive program of uprooting a traditional people against the counsel of anthropologists, sociologists, and other indepencent observers who know the impact of such a program. Truly, this is an issue which gets to the core of the trust responsibility of the Government of the United States to Indian peoples.

I have heard it said that the "equal" partition of the JUA was essentially a fair division of what the court in 1962 called "an equal and undivided interest" in the JUA by both tribes. Let me appeal to your logic and fair play: What is equal in a situation in which over 2,500 Navajo families are being forced off their land, and only 14 Hopi families had to be relocated?

Someone has said "the law is the law and Navajos must move." Public Law 93-531 is the law today is clear. No one needs to tell me or my people that - we know it better than anyone else. But there have many laws that were unjust, and our society looks back on those laws with embarrassment, even shame. Public Law 93-531 is precisely such a law.

We live in a society which provides for orderly changes in the law. Simply to throw up our hands and say "the law is the law" is a hollow and lame excuse to avoid an honest examination of the human impact of the law and it is to hide behind an unrealistic argument. When a law is seen to be so devastating, it must be changed.

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For fourteen years, we have seen the effects of this law. Nearly 210 million tax dollars later, hundreds of failed relocations later, and scores of family break-ups, incidents of alcoholism, drug abuse, mental anguish, despair and suicides later - with all this, we simply do not have that excuse any longer.

In our hearts, we know that relocation is wrong. Chairman Inouye, in the last hearing, on December 9, Assistant Secretary Swimmer himself said that he would not recommend to this government a program of relocation to satisfy some future division of the Bennett Freeze area. He indicated that it would be a mistake to adopt such a policy again.

Now let me ask you: Why is a policy unthinkable for the future, the very same policy which we impose upon thousands of Navajos today?

Are we saying, "yes, we know relocation is despicable, we didn't know what were starting in 1974, but we're still going to apply it to Navajos, but you'll be the only ones"? I must insist that this is a human rights issue -- the most profound human rights issue in this nation today. It must be addressed, and America must come face to face not merely with what it has done, but with what it is doing now.

Mr. Chairman, it is not too late to stop this tragedy. Relocation is less than one-half complete. Thousands of Navajos can still be saved.

Let's stop this senseless suffering right now. In our hearts we know that this policy will be seen in history as a disaster.

On behalf of the Blackrocks and all the people whose lives have been disrupted, diminished and even ended as a direct result of this unjust law, I plead with you today to hasten the time we can lift our eyes and our hearts and say, "We saw injustice and suffering and we ended it."

I want to thank the Committe for allowing me to speak to you, from my heart, today.

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ADDITIONAL TESTIMONY OF RESIDENTS OF THE HOPI PARTITIONED LANDS AND THE BIG MOUNTAIN LEGAL OFFICE

Before the Senate Select Committee on Indian Affairs

Hearing on S. 1236 and Proposed Amendments

Reauthorization of the Navajo-Hopi Indian Relocation Commission

April 22, 1988

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The Big Mountain Legal Office offers the following additional testimony, primarily for two reasons: 1) to respond to some of the oral testimony presented by the Bureau of Indian Affairs and the Navajo-Hopi Indian Relocation Commission on April 12; and 2) to evince further the immediate need for a Congressionally mandated alleviation of the intolerable conditions presently enforced on the Hopi Partitioned Lands.

At the April 12 hearing, Senator Inouye stated that although Americans tend to be very mobile, some articles that he had read on the relocation problem caused him to believe that traditional Native Americans have great difficulty in moving from their ancestral homelands. The Senator then asked Commission Chairman Hawley Atkinson if he thought that the factors of cultural disruption and the loss of traditional, sacred lands were essential to a reconsideration of the problem or if Commissioner Atkinson believed that the federal government should continue to apply the law as strictly as it was originally instructed to do so. Commissioner Atkinson replied that the traditional culture of the Navajo residents of the Hopi Partitioned Lands was definitely affected by the relocation program, but that he knew of no better solution. He added that the "New Lands" currently being developed by the Bureau of Indian Affairs were within the boundaries of the Four Sacred Mountains (the traditional Navajo cosmos), and that in PL 93-531 Congress had guaranteed for both Tribes the access and use of sacred sites located on land subsequently to be partitioned to the other Tribe. Commissioner Atkinson's remarks may be factually accurate; however, they clearly reflect the Commission's long-standing ignorance of and insensitivity to the way of life and rights of the traditional Navajos subject to relocation.

The Commission's ignorance and insensitivity have caused it to withhold meaningful anthropological information from Congress, despite the Commission's trust responsibility and statutory mandate to inform Congress concerning the impacts of the relocation program on the traditional life and religion of the Navajo people. In 1974, Section 13 of PL 93-531 directed the Commission to devise a "detailed plan" for relocation--a plan which would "be developed to the maximum extent feasible in consultation with the persons involved in such relocation" and which would "take into account the adverse social, economic, cultural, and other impacts of relocation on persons involved in such relocation and be developed to avoid or minimize, to the extent possible, such impacts." In 1978, Congress passed the American Indian Religious Freedom Act. Section 2 of this Act directed federal departments and agencies "to evaluate their policies and procedures in consultation with native traditional religious leaders in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices." Moreover, the President was then required to "report back to the Congress the results of this evaluation." Pursuant to the American Indian Religious Freedom Act, the Commission did authorize one, preliminary

anthropological assessment of the relocation program: "A Preliminary Assessment of the Significance of Navajo Sacred Places in the Vicinity of Big Mountain, Arizona" by John J. Wood and Walter M. Vannette, Department of Anthropology of the Northern Arizona University, 1979. (A copy of this study was submitted by the Big Mountain Legal Office to the Commmittee on April 12, 1988).

The anthropologists who conducted this assessment based their evaluation almost entirely on data that had previously been collected by Relocation Commission personnel. Their evaluation of the impacts of the relocation program on traditional Navajo religion suggested that the statutory guarantee of access to and use of sacred sites--however well-intentioned it may have been--was inadequate to ensure the full protection of the right to the free exercise of religion of the traditional Navajos. As the "Preliminary Assessment" itself states: "the right of access to and use of sacred places without occupancy does not make sense" (page 24) . . . . "it appears that the legal provision for access alone may result in infringement of rights, if the suggested interdependency of sacred places and occupancy is borne out" (page 28). In addition to having questioned the constitutionality of relocating traditional Navajos from their sacred, ancestral homelands, the "Preliminary Assessment" repeatedly expressed the need for the federal government to authorize a more detailed and comprehensive study of the religious significance of sacred places for Navajos residing on the Hopi Partitioned Lands (pages 1 and 28). Despite its having received the "Preliminary Assessment" (which had been based upon its own data), the Relocation Commission failed to inform Congress in any meaningful way concerning the adverse impacts of the relocation program on traditional Navajo religion and culture. The Commission did not forward the "Preliminary Assessment" to Congress, nor did it authorize a detailed, comprehensive study--or any additional study--of the impacts of relocation on Navajo religion.

Commissioner Atkinson also stated that he doesn't believe there is really anything the federal government can do in relocating traditional Navajos that would lessen their despair and regret upon leaving their ancestral homelands. On this point, the Big Mountain Legal Office agrees with the Chairman of the Relocation Commission. As Dr. John J. Wood and several other social scientists who have studied the relocation problem have demonstrated, the relocation of traditional Navajos ineluctably creates an unbearable burden of stress and depression because relocation--no matter how efficiently or "humanely" implemented--destroys the basis of traditional Navajo life: the sacred ties that bind individuals and families to their ancestral homelands. Consequently, the Big Mountain Legal Office reiterates its conviction that Congress must still enact alternative legislation which would foster a resolution of the relocation problem that would recognize and protect the traditional culture and human rights of the Native Americans currently subject to relocation.

On the hearing of April 12, 1988, two representatives of the Adminstration--Commissioner Sandra Massetto and Assistant Secretary for Indian Affairs Ross Swimmer--testified that now would be an appropriate time for Congress to announce a clear and definite decision concerning the status of those families who wish to remain on the Hopi Partitioned Lands. Also at the April 12 hearing and on other occasions in the recent past, several members of Congress and other high-ranking officials of the federal government have stated that there will be no forced relocation of families from the Hopi Partitioned Lands and that the Relocation Act of 1974 was a grave mistake which Congress should avoid repeating in the future. Of course, the Big Mountain Legal Office agrees that the Relocation Act was, and is, a terrible mistake. However, we believe that Congress can, and should, do more than promise that there will be no more relocation programs established in the future, when the relocation program mandated by PL 93-531 continues to be implemented today. We also maintain that the relocation program already is, and always has been, characterized by the use of governmental force: not the force of troops but the cruel coercion of a livestock reduction of 85-90%, a freeze on all construction and improvements, the erection of partition-line and range management fences and water diversion projects which have desecrated numerous sacred areas, continual harassment by Relocation Commission and Bureau of Indian Affairs personnel, and ultimately a law which gives the people no choice but to abandon their traditional way of life or else attempt to survive under the most intolerable conditions.

Pending the enactment of legislation which would seek to protect the traditional religion and livelihood of those families who wish to remain on their ancestral homelands, the Senate Select Committee on Indian Affairs should ensure that the harshness of the conditions currently being enforced on the Hopi Partitioned Lands be alleviated. In an effort to educate the Committee concerning the urgent and pressing need for such alleviation, the Big Mountain Legal Office offers the following recent testimony from traditional Navajos who are lawfully residing on the Hopi Partitioned Lands. Contrary to the suggestion that the conditions on the Hopi Partitioned Lands have remained constant over the last several years, the people's testimony evinces that their situation has steadily worsened since the passing of the July, 1986 deadline and has now reached an unbearable level. Particularly distressing have been the numerous reports of increased intimidation and harassment by Bureau of Indian Affairs "counselors" and other personnel. The following declarations from traditional Navajo individuals will also be offered as evidence in the First Amendment (Religious Freedom) lawsuit, as attorneys from the Big Mountain Legal Office and across the country attempt to gain a preliminary injunction against the continued implementation of the relocation program.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

JENNY MANYBEADS, et al., Plaintiffs, v. UNITED STATES, et al., Defendants.	)	CIV. NO. 410 PCT-EHC AFFIDAVIT OF BETTY A. TSO

1. My name is Betty A. Tso and my family and I are the lead plaintiffs in Manybeads v. United States. I have been informed by our lawyers that the court in Arizona will not schedule a hearing on our request for a preliminary injunction until sometime in August or September 1988. Those of us who are still living on the HPL cannot wait for another four (4) to six (6) months for such a hearing. My family is being forced to relocate today not next fall.

2. Already this month, my grandmother Mary Manybeads, my aunt Rose Zilth and my uncle Jim Chee Manybeads relocated their families to the "New Lands". These families had stayed on our land year after year trying everything they could to survive. But now the pressure has become so great and the living conditions so unbearable that they were forced to give up and to relocate.

3. The reason many of us are giving up is because of the pressure from the BIA counselors over the last few months. These BIA people are putting alot of fear into the older people and telling them alot of misinformation that is causing people to

relocate. For example, the BIA has been trying to convince my great-grandmother Jenny Manybeads to relocate but she has always refused. Finally her daughter Mary, her granddaughter, Rose and her grandson, Jim Chee all give up and relocated. When Jenny found out last week that her children were being forced to relocate, she collapsed and was taken to Tuba City hospital.

4. This past week-end (4/16/88) while I was at home, I was told that while my great-grandmother was in the hospital, her daughter Woldeen Yazzie went to visit her. When Woldeen arrived at the hospital she found the BIA counselors were there at Jenny's bedside. They were telling Jenny that she should relocate and join her relatives on the "New Lands". She was very sick and was suffering alot of emotional distress from the relocation program and here those BIA people were still trying to pressure her into leaving.

5. The court must do something right now about this harassment. We cannot survive any longer living like this. If the Judge will not listen to us right now, we should go to another Judge. We are entitled to the same rights and protection as non-Indians. What is happening to us is not fair and I believe that it is a discrimination against us because we are Navajo Indians.

Betty A. Tso

BETTY A. TSO

Sworn and subscribed to this 18th day of April, 1988.

Lu Brooke Phillips
NOTARY PUBLIC

My commission expires My Commission Expires Oct. ,1991.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

JENNY MANYBEADS, et.al., Plaintiffs, v. UNITED STATES et.al., Defendants.	)	CIV. ACTION NO. 410 PCT-EHC DECLARATION OF LOUISE ANN BEGAY

1) My name is Louise Ann Begay and I am from Jeddito on the Hopi Partitioned Lands. I am a member of the class in the lawsuit Manybeads v. United States. I am resisting relocation because here I know the land and am familiar with it. Our lives are here not somewhere else.

2) There are many reasons for my resistance and I have pleaded with the BIA and NHIRC not to force me off of my land. They are fully aware of my resistance to relocation, I have not signed any forms and I have no intention of ever complying with that law.

3) The BIA and NHIRC agents still come to my land and try to persuade me to abandon my land. I tell them that I am resisting and to leave me alone, but they keep coming back time and time again. They were here 2 times in November, 2 times in December before the big winter storm, then 3 times in February.

4) Just a few weeks ago when I returned home one evening there were three government vehicles waiting for my return. I knew they would try to trick me or threaten me into signing up for relocation and I started feeling emotionally sick.

5) They told me that there will never be a change in the

relocation law and that I better sign up right away. They said if I didn't sign up I would be forcibly removed soon and that I would not receive any benefits.

6) I understood what they were saying and it frightened me. My family was one of the families that were forcibly removed from District 6 without ever receiving benefits. Now the BIA and the NHIRC are trying to frighten me into thinking that I would be dumped out on the street like my relatives were. They thought that maybe then I would sign up to relocate. They are trying to scare me off of my land but I have not given up yet.

7) This is not a voluntary relocation. First, they impounded our sheep and told us we could not build new homes. How are we supposed to eat and where are we supposed to live? In November, they were out here again impounding some of my livestock. Now they are threatening us if we don't sign we will be forced out without any place to live. We would become homeless people.

8) They continue to try and force us to sign but I restate my position here, I don't want to move, I am resisting relocation. Why do they keep coming out to my land when each time I tell them to leave me alone because I'm not relocating. When they come to my land my mind starts thinking real fast, my heart beats so fast, and I cannot sleep at night. It makes me so upset. Relocation would destroy our connection with our land, our way of life. Since I am refusing to give in to relocation, they are trying to destroy me. Our strength is running out. The BIA's increased pressure on us is making life unbearable. A few months ago I thought we would be able to survive out here indefinitely.

Now I don't know if we can survive much longer without a change in the law. They are trying to control our minds through harassment and threats.

I declare under penalty of perjury
that the foregoing is true and correct.

Executed this 17 day of April, 1988.

Louise ann Begay
LOUISE ANN BEGAY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JENNY MANYBEADS, et al.,	)	
	)	
Plaintiffs,	)	CIV. NO. 98-0181-GAG
	)	
v.	)	DECLARATION OF NELLICH WALTERS
	)	
UNITED STATES OF AMERICA, et al.,	)	
	)	
Defendants.	)	
	)	

1) My name is Nellich Walters and I am a named Plaintiff from Howell Mesa. I am a great-grandmother, my children, grandchildren and great-grandchildren live all throughout Howell Mesa. They are part of my roots in to Mother Earth. My mother is still living too, she lives not far from here.

2) The BIA agents visit here many times throughout the year except in winter when the roads are real bad. They visited many times last fall and told me to move to the New Lands. They said if I don't hurry up and sign up for relocation right now the BIA will run out of funds and no land or benefits will be available for me. Then I will be forcibly removed from here and have not place to go. I will be just dumped off in the middle of nowhere in some foreign land.

3) I asked them to leave and don't come back because I will never relocate. They sometimes refuse to leave and come back anyway. Two times they came back late at night, once after 10:00 PM and once around midnight. A white BIA truck stood right outside my home with there lights shining into the house. I was

frightened to death. I thought they were going to take me away from my land.

4) I am scared to death whenever they come whether its day or night. Now I hide in the back whenever they come. But I still get very sick and upset over the whole thing. This is no way to treat an elder. Why do they try to frighten me like this. I have asked them to leave me alone but they continue to come back and try to scare me into relocating. I'm afraid that soon when the roads become passable again in a few weeks, they will come out here again. I get so upset when they come I don't know what to do. I can't even sleep or eat anymore knowing that they will come again soon.

I, _____, being duly sworn, depose and state: I can speak and understand both Dineh (Navajo) and English languages and swear that I have faithfully translated the above Declaration of _____ to the best of my ability and understanding and that _____ did understand the same and that the averments contained therein are true and correct to the best of her knowledge.

_____
INTERPRETER

Sworn and subscribed to this ___
day of February, 1987.

_____
NORTARY PUBLIC

My commission expires _____.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

JENNY MANYBEADS, et al., Plaintiffs, v. UNITED STATES, et al., Defendants.	CIV. ACTION NO. 410 PCT-EHC DECLARATION OF CLIZZY T. BITSI

1. My name is Clizzy T. Bitsi and I am from Cactus Valley, north of Big Mountain. I have many, many grandchildren and am even a great-grandmother. I am not sure how old I am, but I have been told that I am over 85 years old. I have lived here my entire life and have no plans to move anywhere else. I am a member of the class in this lawsuit and make this statement because I want you to know I will never leave my sacred land.

2. For a long time the people from Washington (BIA and Relocation Commission) have come and talked real fast to try and get me to relocate. I have always told them the same thing, that they should go away and let me remain in balance and harmony on the land.

3. The people who work for Washington don't listen well. They keep coming back telling me the same things over and over. Many times they come when I'm all alone. Once when they knew I would be alone for awhile, they came 3 times in one week. Whenever they come around I feel very stressful and I don't know what to think. I kept telling them to go away because I don't want to

move no matter what they promised me.

4. They never leave me alone. The more I tell them that I will never relocate, the more they threaten me. Recently, they gave me a choice, either sign up for relocation and get a house or they will drag me off my land and drop me in the middle of nowhere with no shelter. They told me I may get hurt when they drag me away, so I better sign up. I am an old woman, I don't have the strength anymore to fight with them.

5. They have also told me I can no longer graze any livestock, gather wood or water, and plant my fields. They said they will be back to drag me off my land, but until then all I can do is sit in my hogan. Whether they come and drag me away and club me with wood, or not allow me to do anything but rot in my hogan, they are trying to force me to relocate. I don't know how much longer we will last out here one way or another. They are trying to frighten me or force me away from my land.

I declare under penalty of perjury
that the foregoing is true and correct.

Executed this 17 day of April, 1988.

X Clizzy T. Bitsi
CLIZZY T. BITSI

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

JENNY MANYBEADS, et al., Plaintiffs, v. UNITED STATES, et al., Defendants.	CIV. ACTION NO. 410 PCT-EHC DECLARATION OF ZONNIE WHITEHAIR

1. My name is Zonnie Whitehair and I am 63 years old. I live in Cactus Valley and am a member of the class in this lawsuit. I am making this statement because I am opposed to relocation and don't want to leave this land.

2. For a long time, the BIA and Relocation Commission agents came by and tried to persuade us to move off our land. I have always refused because this land is sacred to me and no other land can ever replace it.

3. In the past few months the BIA rangers have come by and tried to starve me or frighten me off the land. They make all of these threats how I won't be able to survive out here any longer and that I better sign up for relocation or I'll die.

4. They told me that I can't plant corn anymore on my fields over there. We have always planted corn there. We need it to eat. We also use corn products in our religious ceremonies.

5. Then they said that I can't graze my livestock any longer. Not even 1 sheep. We have been grazing sheep here for many generations. Years ago we had many sheep and goats. Then the livestock impoundments came and the BIA took away most of our

livestock. It has been very difficult. Sometimes I wonder how we can survive, but we have. I don't know how much longer we can make it, but if they come and impound our remaining livestock as they have promised, it will be the end of us.

6. The BIA also told us that we cannot construct new homes even if our home is falling apart. They also told us we cannot even repair a home, even if it has a hole in the roof.

7. Next they said we can't even gather firewood any longer. How are we supposed to keep warm or cook our food. We have to gather wood to survive. Now whenever I gather wood I am frightened that the BIA might see me and force me off my land.

8. They also said we are not allowed to haul water from the local spring anymore or bring our livestock there. My relatives told me the BIA was checking for tracks not to long ago.

9. How can I survive without water, wood, sheep, corn, or a warm place to live. They did not threaten to kill me with a gun, but it is the same thing to take away everything a person needs to survive. In the past the BIA just tried to persuade me to move off my land, now they are threatening to take away my means of survival. They are telling me I better sign these papers right now and move off my land because they will not allow me to survive out here any longer.

10. Many times I am here alone. I have asked the BIA to leave me alone because I am not interested in relocation. They keep coming back and it frightens me. I don't know what they are going to do to me next.

I declare under penalty of perjury
that the foregoing is true and correct.

Executed this 17 day of April, 1988.

Zonnie Whitehair
ZONNIE WHITEHAIR

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

JENNY MANYBEADS, et al., Plaintiffs, v. UNITED STATES, et al., Defendants.	CIV. ACTION NO. 410 PCT-EHC DECLARATION OF OSCAR WHITEHAIR

1. My name is Oscar Whitehair and I am 74 years old. I am from Cactus Valley, north of Big Mountain. I am a member of the class in the lawsuit Manybeads v. U.S., and am resisting relocation because my religious beliefs and practices require me to always remain on my homeland.

2. The BIA and Relocation Commission's staff have always tried to persuade me and my family to move. They know by now that we have no intention of leaving this land no matter what they say or do.

3. In January they tried a new way to get us off our land. Even though we always told them to go away and never come back, they came 3 times in January and made stronger and stronger THREATS why we better relocate immediately.

4. At first they said there is no hope anymore and that there is no point in resisting the law anymore. Then they said the law is unchangeable and that if we don't sign up now we will be forcibly removed from this land and have no house to move into. They said we must act right now and sign up or next time they

come back they might drag us away forcefully and never allow us to return.

5. Now whenever I see the BIA in the area or hear they are driving around Cactus Valley I feel so uncomfortable and full of stress. Each time I see them it gets worse and worse. How much longer do we have to put up with the constant fear. The harassment is always worse when the weather is good in the summer. I don't know if I can even put up with it through another summer. We need them to let us live free from the harassment now.

I declare under penalty of perjury
that the foregoing is true and correct.

Executed this 17 day of April, 1988.

Oscar Whitehair
OSCAR WHITEHAIR

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

JENNY MANYBEADS, et al., Plaintiffs, v. UNITED STATES, et al., Defendants.	CIV. ACTION NO. 410 PCT-EHC DECLARATION OF MARY LOU BLACKROCK

1. My name is Mary Lou Blackrock and I am from Cactus Valley on the HPL. I am a member of the class in this lawsuit because I do not want to relocate from my sacred homeland.

2. This past fall the BIA started coming around alot more and trying to persuade me to move to the New Lands. I told them I didn't want to move. They kept pressuring me and finally I agreed to go on one of their tours of the New Lands.

3. Then the BIA told me if I don't sign up for relocation right now, I will never receive benefits and will be forcibly removed from the land and have nowhere to go. They said this was my last chance to ever get benefits, but I told them I wanted to stay on my sacred homeland and to leave me alone.

4. Then they told me that if I still refused to move they would not let me graze my livestock there anymore, or gather wood, haul water or even plant corn. They also told me that is someone dies we can no longer bury them on this land anymore. How can they say these things? This is not their land. We were given religious instructions by the Creator how to live on this land.

Our religious teachings require us to bury a person in Mother Earth only on their sacred homeland. They are prohibiting us from practicing our religion. They are trying to force us off our land by taking away the things we need to survive.

5. They have told us if we don't relocate right now, we will be forcibly removed and not receive any housing. Now that they have seen our resistance is strong and that we do not care about nice houses somewhere else, they want to starve us off our land. I do not know exactly when they will come and take away everything we own, but we will always try to survive on this land no matter how hard it gets.

I declare under penalty of perjury
that the foregoing is true and correct.

Executed this 17 day of April, 1988.

Mary Lou Blackrock
MARY LOU BLACKROCK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

JENNY MANYBEADS, et al.,	)	
	)	
Plaintiffs,	)	CIVIL ACTION NO. A10 PCT-EHC
	)	
v.	)	DECLARATION OF SAM TSO
	)	
UNITED STATES, et al.,	)	
	)	
Defendants.	)	
	)	

1) My name is Sam Tso and I am 25 years old. I live on my family's ancestral homeland in Mosquito Springs, land now partitioned to the Hopi Tribe. I practice the traditional Dineh religion as I have been taught by my parents, grandparents, and great grandparents. Our religious teachings instruct us to stay on our land and caretake it. For that reason, I am resisting relocation and will continue to resist relocation forever.

2) The Relocation Act is like a great big monster from Washington. It is destroying our religious practices, our religious sites and ultimately our lives.

3) Under the relocation program, the Bureau of Indian Affairs is constructing fences and other projects on our land. These construction projects destroy our sacred shrines. Our religion is land based. We have certain sacred shrines where we make our prayers and offerings to communicate with the Holy People and the Creator. The location of our shrines is passed down orally through the generations. The shrines may only look like springs, buttes, rock formations, etc. to the non-Dineh, but

to us they are sacred and through them we communicate to our Gods.

4) Our shrines are not marked with signs or marked on maps. Only the Dineh people who use the sites know where they are. Within each community there are sites that the local people use, while other sites may only be used by a few families or even an individual. We cannot reveal the location of these sites to non-Dineh. That is not our way. We must protect these sites, its not good to let strangers know where the sites are. If someone harms one of your religious shrines, the harm will ultimately come back to you.

5) The fencing and construction crews just come on to our sacred land and start destroying things. They drag bulldozers, raze trees, and tear up Mother Earth with no care or regard for the people who live here and worship this land. Our religious sites are scattered all throughout this land. Whenever they come in to build things, they inevitably destroy religious shrines. These are destruction crews not construction crews. I cannot permit these destruction crews to desecrate our religious sites. The destruction violates all of my religious teachings. I must defend and protect these sites for my family and my people.

6) The construction/destruction occurs throughout most of the year except winter. In March and April of 1986, the work crews began constructing range management cross fencing in my family's customary use area. The fencing crew bulldozed a cradleboard shrine and disturbed my grandfathers burial site.

These were sacred sites to my family. The fencing crews actions harmed my family.

7) The elders from my area met and asked some of us young people to go to the work crew and tell them they must stop the destruction of our sacred shrines. They refused to listen to us so we started pulling out the fence posts. Because I tried to stop the destruction I was arrested and imprisoned.

8) We are now approaching spring again, its just a few weeks away. Every year around March the destruction crew begins their projects again. I cannot let them destroy any more sacred sites, they are endangering not only our religion but our well being.

9) If they come out to my family's area again and start on their destruction projects I will have to confront them again. They may arrest me but I cannot just stand by and watch them destroy our religious sites. I was raised as a Dineh, my elders have passed down our religious teachings to us young people and those teachings are the highest law I know.

10) I thought this country had laws protecting religious practices. Our religious practices cannot be separated from our sacred sites on our land. If the Bureau of Indian Affairs was destroying your religious practices, those laws would protect you. Do those laws only protect non-Indian people?

I declare under penalty of perjury
that the foregoing is true and correct.
Executed this 18 day of February, 1988

SAM TSO